

By: Hardcastle

H.B. No. 2260

A BILL TO BE ENTITLED

AN ACT

relating to penalties for repeat and habitual felony offenders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12.42, Penal Code, is amended to read as follows:

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS. (a) Except as provided by Subsection (b), the penalties provided by Subchapter C are enhanced for repeat offenders as follows:

(1)(A) If it is shown that a defendant on trial for a state jail felony has previously been convicted of a state jail felony offense, the minimum term of confinement is nine months.

(B) If it is shown that a defendant on trial for a state jail felony has previously been convicted of a felony other than a state jail felony, the minimum term of confinement is 12 months.

(C) If it is shown that a defendant on trial for a state jail felony has previously been twice convicted of felony offenses arising out of different criminal transactions, the defendant shall be punished and subsequently be considered for purposes of this section as though convicted of a felony of the third degree.

(2)(A) If it is shown that a defendant on trial for a felony of the third degree has previously been convicted of a state

1 jail felony or a felony of the third degree, the minimum term of  
2 imprisonment is four years.

3 (B) If it is shown that a defendant on trial for a  
4 felony of the third degree has previously been convicted of a second  
5 or first degree felony, the minimum term of imprisonment is five  
6 years.

7 (C) If it is shown that a defendant on trial for a  
8 felony of the third degree has previously been twice convicted of  
9 felony offenses arising out of different criminal transactions, the  
10 defendant shall be punished and subsequently be considered for the  
11 purposes of this section as though convicted of a felony of the  
12 second degree, for which the minimum term of imprisonment is five  
13 years.

14 (3)(A) If it is shown that a defendant on trial for a  
15 felony of the second degree has previously been convicted of a state  
16 jail felony or a felony of the third degree, the minimum term of  
17 imprisonment is six years.

18 (B) If it is shown that a defendant on trial for a  
19 felony of the second degree has previously been convicted of a  
20 felony of the second or first degree, the defendant shall be  
21 punished and subsequently be considered for the purposes of this  
22 section as though convicted of a felony of the first degree.

23 (C) If it is shown that a defendant on trial for a  
24 felony of the second degree has previously been twice convicted of  
25 felony offenses arising out of different criminal transactions, the  
26 defendant shall be punished and subsequently be considered for the  
27 purposes of this section as though convicted of a felony of the

1 first degree, for which the minimum term of imprisonment is 15  
2 years.

3 (4)(A) If it is shown that a defendant on trial for a  
4 felony of the first degree has previously been convicted of a state  
5 jail felony or a felony of the third degree, the minimum term of  
6 imprisonment is 10 years.

7 (B) If it is shown that a defendant on trial for a  
8 felony of the first degree has previously been convicted of a felony  
9 of the second or first degree, the minimum term of imprisonment is  
10 15 years.

11 (C) If it is shown that a defendant on trial for a  
12 felony of the first degree has previously been twice convicted of  
13 felony offenses arising out of different criminal transactions, the  
14 minimum term of imprisonment is 25 years. [~~(a)(1) If it is shown on~~  
15 ~~the trial of a state jail felony punishable under Section 12.35(a)~~  
16 ~~that the defendant has previously been finally convicted of two~~  
17 ~~state jail felonies, on conviction the defendant shall be punished~~  
18 ~~for a third-degree felony.~~

19 [~~(2) If it is shown on the trial of a state jail felony~~  
20 ~~punishable under Section 12.35(a) that the defendant has previously~~  
21 ~~been finally convicted of two felonies, and the second previous~~  
22 ~~felony conviction is for an offense that occurred subsequent to the~~  
23 ~~first previous conviction having become final, on conviction the~~  
24 ~~defendant shall be punished for a second-degree felony.~~

25 [~~(3) If it is shown on the trial of a state jail felony~~  
26 ~~punishable under Section 12.35(c) or on the trial of a third-degree~~  
27 ~~felony that the defendant has been once before convicted of a~~

1 ~~felony, on conviction he shall be punished for a second-degree~~  
2 ~~felony.]~~

3 (b) ~~[If it is shown on the trial of a second-degree felony~~  
4 ~~that the defendant has been once before convicted of a felony, on~~  
5 ~~conviction he shall be punished for a first-degree felony.~~

6 ~~[(c)(1) Except as provided by Subdivision (2), if it is~~  
7 ~~shown on the trial of a first-degree felony that the defendant has~~  
8 ~~been once before convicted of a felony, on conviction he shall be~~  
9 ~~punished by imprisonment in the institutional division of the Texas~~  
10 ~~Department of Criminal Justice for life, or for any term of not more~~  
11 ~~than 99 years or less than 15 years. In addition to imprisonment,~~  
12 ~~an individual may be punished by a fine not to exceed \$10,000.~~

13 ~~[(2)]~~ A defendant shall be punished by imprisonment in  
14 the Texas Department of Criminal Justice ~~[institutional division]~~  
15 for life if:

16 (1) ~~[(A)]~~ the defendant is convicted of an offense:

17 (A) ~~[(i)]~~ under Section 21.11, 22.021, or  
18 22.011, Penal Code;

19 (B) ~~[(ii)]~~ under Section 20.04(a)(4), Penal  
20 Code, if the defendant committed the offense with the intent to  
21 violate or abuse the victim sexually; ~~[or]~~

22 (C) ~~[(iii)]~~ under Section 30.02, Penal Code,  
23 punishable under Subsection (d) of that section, if the defendant  
24 committed the offense with the intent to commit a felony described  
25 by Subparagraph (i) or (ii) ~~[or a felony under Section 21.11 or~~  
26 ~~22.011, Penal Code]~~; or

27 (D) under Section 43.25, Penal Code; and

1           (2) [~~(B)~~] the defendant has been previously convicted  
2 of an offense:

3                   (A) [~~(i)~~] under Section 43.25 or 43.26, Penal  
4 Code, or an offense under Section 43.23, Penal Code, punishable  
5 under Subsection (h) of that section;

6                   (B) [~~(ii)~~] under Section 21.11, 22.011, 22.021,  
7 or 25.02, Penal Code;

8                   (C) [~~(iii)~~] under Section 20.04(a)(4), Penal  
9 Code, if the defendant committed the offense with the intent to  
10 violate or abuse the victim sexually;

11                   (D) [~~(iv)~~] under Section 30.02, Penal Code,  
12 punishable under Subsection (d) of that section, if the defendant  
13 committed the offense with the intent to commit a felony described  
14 by Subparagraph (ii) or (iii); or

15                   (E) [~~(v)~~] under the laws of another state  
16 containing elements that are substantially similar to the elements  
17 of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

18           (c) For the purposes of this section, a person is considered  
19 to be convicted of an offense if the offense was committed and a  
20 written judgment adjudicating the defendant's guilt was entered  
21 before the commission of the offense for which the defendant is on  
22 trial, regardless of whether the imposition of sentence for the  
23 prior offense was suspended or whether the defendant has been  
24 released from all penalties and disabilities resulting from the  
25 prior offense under Section 20(a), Article 42.12, Code of Criminal  
26 Procedure.

27           (d) For the purposes of Subsection (a), in addition to the

1 circumstances described by Subsection (c), a person is considered  
2 to be convicted of an offense if the offense was committed and an  
3 order placing the defendant on deferred adjudication community  
4 supervision under Section 5, Article 42.12, Code of Criminal  
5 Procedure, was entered before the commission of the offense for  
6 which the defendant is on trial.

7 (e) A person whose punishment is determined under  
8 Subsection (c) based on a prior conviction that is subsequently set  
9 aside by an appellate court or as a result of a pardon in accordance  
10 with Section 11, Article IV, Texas Constitution, shall be  
11 resentenced under the procedure prescribed in Article 44.29(b),  
12 Code of Criminal Procedure, within the range of punishment  
13 applicable to the offense as though the previous invalid conviction  
14 had never occurred.

15 (f) For the purposes of this section:

16 (1) a person convicted of a capital felony who is  
17 punished by imprisonment for life is considered to have been  
18 convicted of a felony of the first degree; and

19 (2) a person convicted of an offense punished under  
20 Section 12.35(c) is considered to have been convicted of a felony of  
21 the third degree.

22 ~~[(d) If it is shown on the trial of a felony offense other~~  
23 ~~than a state jail felony punishable under Section 12.35(a) that the~~  
24 ~~defendant has previously been finally convicted of two felony~~  
25 ~~offenses, and the second previous felony conviction is for an~~  
26 ~~offense that occurred subsequent to the first previous conviction~~  
27 ~~having become final, on conviction he shall be punished by~~

1 ~~imprisonment in the institutional division of the Texas Department~~  
2 ~~of Criminal Justice for life, or for any term of not more than 99~~  
3 ~~years or less than 25 years.~~

4 ~~[(e) A previous conviction for a state jail felony punished~~  
5 ~~under Section 12.35(a) may not be used for enhancement purposes~~  
6 ~~under Subsection (b), (c), or (d).]~~

7 ~~[(f) For the purposes of Subsections (a), (b), (c)(1), and~~  
8 ~~(e), an adjudication by a juvenile court under Section 54.03,~~  
9 ~~Family Code, that a child engaged in delinquent conduct on or after~~  
10 ~~January 1, 1996, constituting a felony offense for which the child~~  
11 ~~is committed to the Texas Youth Commission under Section~~  
12 ~~54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f),~~  
13 ~~Family Code, is a final felony conviction.]~~

14 ~~[(g) For the purposes of Subsection (c)(2):~~

15 ~~[(1) a defendant has been previously convicted of an~~  
16 ~~offense listed under Subsection (c)(2)(B) if the defendant was~~  
17 ~~adjudged guilty of the offense or entered a plea of guilty or nolo~~  
18 ~~contendere in return for a grant of deferred adjudication,~~  
19 ~~regardless of whether the sentence for the offense was ever imposed~~  
20 ~~or whether the sentence was probated and the defendant was~~  
21 ~~subsequently discharged from community supervision; and~~

22 ~~[(2) a conviction under the laws of another state for~~  
23 ~~an offense containing elements that are substantially similar to~~  
24 ~~the elements of an offense listed under Subsection (c)(2)(B) is a~~  
25 ~~conviction of an offense listed under Subsection (c)(2)(B).]~~

26 SECTION 2. Section 4, Article 37.07, Code of Criminal  
27 Procedure, is amended by amending Subsections (b) and (c) and

1 adding Subsection (e) to read as follows:

2 (b) In the penalty phase of the trial of a felony case in  
3 which the punishment is to be assessed by the jury rather than the  
4 court, if the offense is punishable as a felony of the first  
5 degree [~~, if a prior conviction has been alleged for enhancement of~~  
6 ~~punishment as provided by Section 12.42(b), (c), or (d), Penal~~  
7 ~~Code,~~] or if the offense is a felony not designated as a capital  
8 felony or a felony of the first, second, or third degree and the  
9 maximum term of imprisonment that may be imposed for the offense is  
10 longer than 60 years, unless the offense of which the jury has found  
11 the defendant guilty is listed in Section 3g(a)(1), Article 42.12,  
12 of this code or the judgment contains an affirmative finding under  
13 Section 3g(a)(2), Article 42.12, of this code, the court shall  
14 charge the jury in writing as follows:

15 "Under the law applicable in this case, the defendant, if  
16 sentenced to a term of imprisonment, may earn time off the period of  
17 incarceration imposed through the award of good conduct time.  
18 Prison authorities may award good conduct time to a prisoner who  
19 exhibits good behavior, diligence in carrying out prison work  
20 assignments, and attempts at rehabilitation. If a prisoner engages  
21 in misconduct, prison authorities may also take away all or part of  
22 any good conduct time earned by the prisoner.

23 "It is also possible that the length of time for which the  
24 defendant will be imprisoned might be reduced by the award of  
25 parole.

26 "Under the law applicable in this case, if the defendant is  
27 sentenced to a term of imprisonment, he will not become eligible for



1 parole until the actual time served plus any good conduct time  
2 earned equals one-fourth of the sentence imposed or 15 years,  
3 whichever is less. Eligibility for parole does not guarantee that  
4 parole will be granted.

5 "It cannot accurately be predicted how the parole law and  
6 good conduct time might be applied to this defendant if he is  
7 sentenced to a term of imprisonment, because the application of  
8 these laws will depend on decisions made by prison and parole  
9 authorities.

10 "You may consider the existence of the parole law and good  
11 conduct time. However, you are not to consider the extent to which  
12 good conduct time may be awarded to or forfeited by this particular  
13 defendant. You are not to consider the manner in which the parole  
14 law may be applied to this particular defendant."

15 (c) In the penalty phase of the trial of a felony case in  
16 which the punishment is to be assessed by the jury rather than the  
17 court, if the offense is punishable as a felony of the second or  
18 third degree~~[, if a prior conviction has been alleged for~~  
19 ~~enhancement as provided by Section 12.42(a), Penal Code,~~] or if the  
20 offense is a felony not designated as a capital felony or a felony  
21 of the first, second, or third degree and the maximum term of  
22 imprisonment that may be imposed for the offense is 60 years or  
23 less, unless the offense of which the jury has found the defendant  
24 guilty is listed in Section 3g(a)(1), Article 42.12, of this code or  
25 the judgment contains an affirmative finding under Section  
26 3g(a)(2), Article 42.12, of this code, the court shall charge the  
27 jury in writing as follows:

1 "Under the law applicable in this case, the defendant, if  
2 sentenced to a term of imprisonment, may earn time off the period of  
3 incarceration imposed through the award of good conduct time.  
4 Prison authorities may award good conduct time to a prisoner who  
5 exhibits good behavior, diligence in carrying out prison work  
6 assignments, and attempts at rehabilitation. If a prisoner engages  
7 in misconduct, prison authorities may also take away all or part of  
8 any good conduct time earned by the prisoner.

9 "It is also possible that the length of time for which the  
10 defendant will be imprisoned might be reduced by the award of  
11 parole.

12 "Under the law applicable in this case, if the defendant is  
13 sentenced to a term of imprisonment, he will not become eligible for  
14 parole until the actual time served plus any good conduct time  
15 earned equals one-fourth of the sentence imposed. Eligibility for  
16 parole does not guarantee that parole will be granted.

17 "It cannot accurately be predicted how the parole law and  
18 good conduct time might be applied to this defendant if he is  
19 sentenced to a term of imprisonment, because the application of  
20 these laws will depend on decisions made by prison and parole  
21 authorities.

22 "You may consider the existence of the parole law and good  
23 conduct time. However, you are not to consider the extent to which  
24 good conduct time may be awarded to or forfeited by this particular  
25 defendant. You are not to consider the manner in which the parole  
26 law may be applied to this particular defendant."

27 (e) In the penalty phase of the trial of a felony case in

1 which the punishment is to be assessed by the jury and in which a  
2 prior conviction has been alleged for enhancement of punishment as  
3 provided by Section 12.42, Penal Code, the court shall charge the  
4 jury in writing in the same manner as required by Subsections (b)  
5 and (c) of this section, except that the court shall include in the  
6 charge the applicable minimum and maximum terms of confinement  
7 required by Section 12.42.

8 SECTION 3. Section 5(c), Article 42.12, Code of Criminal  
9 Procedure, is amended to read as follows:

10 (c) On expiration of a community supervision period imposed  
11 under Subsection (a) of this section, if the judge has not proceeded  
12 to adjudication of guilt, the judge shall dismiss the proceedings  
13 against the defendant and discharge him. The judge may dismiss the  
14 proceedings and discharge a defendant, other than a defendant  
15 charged with an offense requiring the defendant to register as a sex  
16 offender under Chapter 62, [~~as added by Chapter 668, Acts of the~~  
17 ~~75th Legislature, Regular Session, 1997,~~] prior to the expiration  
18 of the term of community supervision if in the judge's opinion the  
19 best interest of society and the defendant will be served. The  
20 judge may not dismiss the proceedings and discharge a defendant  
21 charged with an offense requiring the defendant to register under  
22 Chapter 62 [~~as added by Chapter 668, Acts of the 75th Legislature,~~  
23 ~~Regular Session, 1997~~]. Except as provided by Section 12.42(d)  
24 [~~12.42(g)~~], Penal Code, a dismissal and discharge under this  
25 section may not be deemed a conviction for the purposes of  
26 disqualifications or disabilities imposed by law for conviction of  
27 an offense. For any defendant who receives a dismissal and

1 discharge under this section:

2 (1) upon conviction of a subsequent offense, the fact  
3 that the defendant had previously received community supervision  
4 with a deferred adjudication of guilt shall be admissible before  
5 the court or jury to be considered on the issue of penalty;

6 (2) if the defendant is an applicant for a license or  
7 is a licensee under Chapter 42, Human Resources Code, the Texas  
8 Department of Human Services may consider the fact that the  
9 defendant previously has received community supervision with a  
10 deferred adjudication of guilt under this section in issuing,  
11 renewing, denying, or revoking a license under that chapter; and

12 (3) if the defendant is a person who has applied for  
13 registration to provide mental health or medical services for the  
14 rehabilitation of sex offenders, the Interagency Council on Sex  
15 Offender Treatment may consider the fact that the defendant has  
16 received community supervision under this section in issuing,  
17 renewing, denying, or revoking a license or registration issued by  
18 that council.

19 SECTION 4. The change in law made by this Act applies only  
20 to an offense committed on or after the effective date of this Act.  
21 An offense committed before the effective date of this Act is  
22 covered by the law in effect when the offense was committed, and the  
23 former law is continued in effect for that purpose. For purposes of  
24 this section, an offense was committed before the effective date of  
25 this Act if any element of the offense was committed before that  
26 date.

27 SECTION 5. This Act takes effect September 1, 2007.