

BILL ANALYSIS

C.S.H.B. 1302
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties cite incidents involving registered sex offenders committing additional sex crimes and other violent offenses, including murder, after release from prison, and the parties assert that these repeat offenders should be subject to more severe punishment than the punishment currently prescribed by Texas statutes. Current law requires a defendant convicted of continuous sexual abuse of a young child or children, aggravated sexual assault, or continuous trafficking of persons to be punished by imprisonment in the Texas Department of Criminal Justice for life without parole if the defendant has previously been convicted of such an offense. C.S.H.B. 1302 seeks to expand this requirement to include additional sexually violent offenses committed against a child and to address reported incidents of sex offenders luring child victims into vehicles by prohibiting certain sex offenders from some types of employment.

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. 1302 amends the Code of Criminal Procedure to require a judge, in the trial of a sexually violent offense, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was younger than 13 years of age at the time of the offense. The bill requires a judge who places on deferred adjudication community supervision a defendant charged with a sexually violent offense to make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case on determination that the victim or intended victim was younger than 13 years of age at the time of the offense.

C.S.H.B. 1302 prohibits a person subject to sex offender registration because of a reportable conviction or adjudication for a sexually violent offense for which such an affirmative finding is entered from performing the following activities for compensation: operating or offering to operate a bus; providing or offering to provide a passenger taxicab or limousine transportation service; providing or offering to provide any type of service in the residence of another person; or operating or offering to operate any amusement ride. The bill requires a local law enforcement authority that provides to a person subject to those prohibitions a registration form for verification of sex offender registration information to include with that form a statement summarizing the types of employment that are prohibited for that person. The bill requires an official of a penal institution, before releasing a person who will be subject to sex offender registration on release, to inform that person of the prohibitions against certain types of employment for a person with a reportable conviction or adjudication for a sexually violent offense involving a victim younger than 13 years of age occurring on or after September 1, 2013.

C.S.H.B. 1302 reenacts and amends Section 12.42(c)(4), Penal Code, as amended by Chapters 122 (H.B. 3000) and 1119 (H.B. 3), Acts of the 82nd Legislature, Regular Session, 2011, to

expand the offenses a conviction of which results in punishment by imprisonment in the Texas Department of Criminal Justice for life without parole if it is shown on trial that the defendant has previously been finally convicted of specified offenses to include certain sexually violent offenses committed by a person 17 years of age or older against a child younger than 13 years of age and an offense under the laws of another state containing elements that are substantially similar to the elements of those sexually violent offenses committed under those circumstances. The bill includes among the specified previous conviction offenses that render such punishment those sexually violent offenses committed by a person 17 years of age or older against a child younger than 13 years of age and an offense under the laws of another state containing elements that are substantially similar to those sexually violent offenses committed under those circumstances. The bill provides an exception to that punishment for a certain defendant convicted of aggravated sexual assault who is required under law to be punished for a capital felony.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1302 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 42.015, Code of Criminal Procedure, is amended to read as follows:

Art. 42.015. FINDING OF AGE OF VICTIM. (a) In the trial of an offense under Section 20.02, 20.03, or 20.04, Penal Code, or an attempt, conspiracy, or solicitation to commit one of those offenses, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was younger than 17 years of age at the time of the offense.
(b) In the trial of a sexually violent offense, as defined by Article 62.001, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was younger than 13 years of age at the time of the offense.

SECTION 2. Section 5(e), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(e)(1) If a judge places on community supervision under this section a defendant charged with an offense under Section 20.02, 20.03, or 20.04, Penal Code, or an attempt, conspiracy, or solicitation to

commit one of those offenses, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that the victim or intended victim was younger than 17 years of age at the time of the offense.

(2) If a judge places on community supervision under this section a defendant charged with a sexually violent offense, as defined by Article 62.001, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that the victim or intended victim was younger than 13 years of age at the time of the offense.

SECTION 1. Article 62.053(a), Code of Criminal Procedure, is amended to read as follows:

(a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Juvenile Justice Department [~~Youth Commission~~] shall determine the person's level of risk to the community using the sex offender screening tool developed or selected under Article 62.007 and assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official of the penal institution shall:

(1) inform the person that:

(A) not later than the later of the seventh day after the date on which the person is released or after the date on which the person moves from a previous residence to a new residence in this state or not later than the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, the person must register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside;

(B) not later than the seventh day after the date on which the person is released or the date on which the person moves from a previous residence to a new residence in this state, the person must, if the person has not moved to an intended residence, report to the applicable entity or entities as required by Article 62.051(h) or (j) or 62.055(e);

(C) not later than the seventh day before the

SECTION 3. Article 62.053(a), Code of Criminal Procedure, is amended to read as follows:

(a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Juvenile Justice Department [~~Youth Commission~~] shall determine the person's level of risk to the community using the sex offender screening tool developed or selected under Article 62.007 and assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official of the penal institution shall:

(1) inform the person that:

(A) not later than the later of the seventh day after the date on which the person is released or after the date on which the person moves from a previous residence to a new residence in this state or not later than the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, the person must register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside;

(B) not later than the seventh day after the date on which the person is released or the date on which the person moves from a previous residence to a new residence in this state, the person must, if the person has not moved to an intended residence, report to the applicable entity or entities as required by Article 62.051(h) or (j) or 62.055(e);

(C) not later than the seventh day before the

date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(D) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders;

(E) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person; ~~and~~

(F) the person must notify appropriate entities of any change in status as described by Article 62.057; and

(G) certain types of employment are prohibited under Article 62.063 for a person with a reportable conviction or adjudication occurring on or after September 1, 2013;

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or Subsection (g) or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address or, if applicable, a detailed description of each geographical location where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints; and

(4) complete the registration form for the person.

SECTION 2. Article 62.058, Code of Criminal Procedure, is amended.

date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(D) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders;

(E) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person; ~~and~~

(F) the person must notify appropriate entities of any change in status as described by Article 62.057; and

(G) certain types of employment are prohibited under Article 62.063 for a person with a reportable conviction or adjudication for a sexually violent offense involving a victim younger than 13 years of age occurring on or after September 1, 2013;

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or Subsection (g) or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address or, if applicable, a detailed description of each geographical location where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints; and

(4) complete the registration form for the person.

SECTION 4. Same as introduced version.

SECTION 3. Subchapter B, Chapter 62, Code of Criminal Procedure, is amended by adding Article 62.063 to read as follows:

Art. 62.063. PROHIBITED EMPLOYMENT. (a) In this section:

(1) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

(2) "Bus" has the meaning assigned by Section 541.201, Transportation Code.

(b) A person subject to registration under this chapter may not, for compensation:

(1) operate or offer to operate a bus;

(2) provide or offer to provide a passenger taxicab or limousine transportation service;
or

(3) provide or offer to provide any type of service in the residence of another person.

(c) A person subject to registration under this chapter because of one or more reportable convictions or adjudications for an offense or conduct involving a victim younger than 17 years of age may not operate or offer to operate any amusement ride.

SECTION 4. Sections 12.42(b) and (d), Penal Code, as amended by Chapters 834 (H.B. 3384) and 1119 (H.B. 3), Acts of the 82nd Legislature, Regular Session, 2011, are reenacted.

SECTION 5. Section 12.42(c)(4), Penal Code, as amended by Chapters 122 (H.B. 3000) and 1119 (H.B. 3), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended.

SECTION 6. Section 12.42, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) In this section, "sexually violent offense" means:

(1) an offense under Section 21.02 (Continuous sexual abuse of young child or children) or 22.021 (Aggravated sexual assault); or

(2) any of the following offenses committed by a person 17 years of age or older against a child younger than 13 years of age:

(A) an offense under Section 20A.02(a)(7)

SECTION 5. Subchapter B, Chapter 62, Code of Criminal Procedure, is amended by adding Article 62.063 to read as follows:

Art. 62.063. PROHIBITED EMPLOYMENT. (a) In this section:

(1) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

(2) "Bus" has the meaning assigned by Section 541.201, Transportation Code.

(b) A person subject to registration under this chapter because of a reportable conviction or adjudication for which an affirmative finding is entered under Article 42.015(b) or Section 5(e)(2), Article 42.12, as appropriate, may not, for compensation:

(1) operate or offer to operate a bus;

(2) provide or offer to provide a passenger taxicab or limousine transportation service;

(3) provide or offer to provide any type of service in the residence of another person;
or

(4) operate or offer to operate any amusement ride.

SECTION 6. Same as introduced version.

SECTION 7. Substantially the same as introduced version.

SECTION 8. Section 12.42, Penal Code, is amended by adding Subsection (h) to read as follows:

(h) In this section, "sexually violent offense" means:

(1) an offense under Section 21.02 (Continuous sexual abuse of young child or children) or 22.021 (Aggravated sexual assault); or

(2) any of the following offenses committed by a person 17 years of age or older against a child younger than 13 years of age:

(A) an offense under Section 20A.02(a)(7)

or (8) (Sex trafficking of a child), 21.11(a)(1) (Indecency with a child), 22.011 (Sexual assault), or 43.25 (Sexual performance by a child);

(B) an offense under Section 20.04(a)(4) (Aggravated kidnapping), if the defendant committed the offense with intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02 (Burglary), if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit an offense under Section 21.11(a)(2) (Indecency with a child), 25.02 (Prohibited sexual conduct), or a felony listed in Paragraph (A) or (B) of this subsection; or

(D) an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice, if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), or (C).

SECTION 7. (a) The change in law made by this Act in adding Article 62.063, Code of Criminal Procedure, applies only to a person who is required to register under Chapter 62, Code of Criminal Procedure, on the basis of a conviction or adjudication **that occurs** on or after the effective date of this Act.

A person who is required to register under Chapter 62, Code of Criminal Procedure, solely on the basis of a conviction or adjudication that occurs before the effective date of this Act is governed by the law in effect when the conviction or adjudication occurred, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act in amending Section 12.42, Penal Code,

or (8) (Sex trafficking of a child), 21.11(a)(1) (Indecency with a child), 22.011 (Sexual assault), or 43.25 (Sexual performance by a child);

(B) an offense under Section 20.04(a)(4) (Aggravated kidnapping), if the defendant committed the offense with intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02 (Burglary), if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit an offense under Section 21.11(a)(2) (Indecency with a child), 25.02 (Prohibited sexual conduct), or a felony listed in Paragraph (A) or (B) of this subdivision; or

(D) an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice, if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), or (C).

SECTION 9. (a)(1) The change in law made by this Act in adding Article 62.063, Code of Criminal Procedure, applies only to a person who is required to register under Chapter 62, Code of Criminal Procedure, on the basis of a conviction or adjudication **for an offense described by that article and for which an affirmative finding under Article 42.015(b) or Section 5(e)(2), Article 42.12, Code of Criminal Procedure, as added by this Act, is made** on or after the effective date of this Act.

(2) Article 42.015(b), Code of Criminal Procedure, and Section 5(e)(2), Code of Criminal Procedure, as added by this Act, apply, as appropriate, only to a trial commenced on or after the effective date of this Act or an order of deferred adjudication entered on or after the effective date of this Act.

(3) A person who is required to register under Chapter 62, Code of Criminal Procedure, solely on the basis of a conviction or adjudication that occurs before the effective date of this Act is governed by the law in effect when the conviction or adjudication occurred, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act in amending Section 12.42, 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 section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 8. To the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. This Act takes effect September 1, 2013.

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 10. Same as introduced version.

SECTION 11. Same as introduced version.