

BILL ANALYSIS

Senate Research Center
80R4933 KCR-D

S.B. 5
By: Deuell et al.
Criminal Justice
3/9/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 5 enacts tougher penalties on sexual predators who target children. This bill imposes a 25-year minimum sentence for sexually violent offenses against children under 14 years of age, eliminates eligibility for parole for certain sex offenders, and makes a second conviction of a sexually violent offense against a child under 14 years of age a capital felony. In addition, S.B. 5 provides for global positioning system (GPS) monitoring for offenders committed under the sexually violent predator statutes, extends the statute of limitations for sexually violent offenses against children under the age of 14 to 20 years past his or her 18th birthday, and clarifies that harboring a sex offender in violation of registration is an offense punishable by up to a third degree felony.

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 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. (a) Creates Subsection (a) from existing text. Sets forth the statute of limitations for certain offenses. Provides that the statute of limitation for a sexual assault is 10 years from the date of the commission of the offense, except as provided by Subdivision (1) or (6), rather than Subdivision (5). Provides that the statute of limitation for a kidnapping or burglary is five years from the date of the commission of the offense, except as provided by Subdivision (6). Provides a statute of limitation of 10 years from the 18th birthday of the victim of an offense of indecency with a child under Section 21.11(a)(2), rather than 21.11(a)(1) or (2), Penal Code. Provides a statute of limitation of 20 years from the 18th birthday of the victim of a sexually violent offense, if the investigation shows that the victim is younger than 14 years of age at the time the offense is committed, except as provided by Subsection (1).

(b) Defines "sexually violent offense."

SECTION 2. Amends Section 4, Article 37.07, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Requires the court to charge the jury in the penalty phase of the trial of a felony case in writing with certain instructions, unless the person is convicted of certain offenses including a sexually violent offense in which the victim was younger than 14 years of age at the time the offense was committed.

(b) Makes a conforming change.

(e) Defines "sexually violent offense."

SECTION 3. Amends Section 2, Article 37.071, Code of Criminal Procedure, by adding Subsection (j), to prohibit the court from submitting certain issues in a case punishable as a capital felony under Section 12.42(c)(3), Penal Code, to the jury.

SECTION 4. Amends Section 508.145, Government Code, by amending Subsections (a), (c), and (d) and adding Subsection (b), as follows:

(a) Specifies that an inmate under sentence of death, serving a life sentence, or serving a sentence for an offense for which punishment is increased under Section 12.50, Penal Code, is not eligible for parole.

(b) Provides that, notwithstanding Subsections (c) and (d), an inmate is not eligible for release on parole if the inmate is serving a sentence for certain offenses and for which the victim is younger than 14 years old at the time the offense is committed.

(c) and (d) Makes conforming changes.

SECTION 5. Amends Section 508.149(a), Government Code, as follows:

(a) Prohibits an inmate from being released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of an offense, rather than a second or third degree felony, under Section 21.11 (Indecency With a Child), Penal Code; a felony, rather than a second degree felony, under Section 22.011 (Sexual Assault), Penal Code; or a first degree felony under Section 43.25 (Sexual Performance By a Child), Penal Code.

SECTION 6. Amends Section 841.082, Health and Safety Code, by adding Subsection (b), to require a tracking service to which a person is required to submit to track the person's location in real time, to provide a real-time report of the person's location to the case manager upon request, and to periodically provide a cumulative report of the person's location to the case manager.

SECTION 7. Amends Subchapter E, Chapter 841, Health and Safety Code, by adding Section 841.084, as follows:

Sec. 841.084. COST OF TRACKING SERVICE. Requires that, notwithstanding Section 841.146(c), a civilly committed person who is not indigent be responsible for the cost of the tracking service required by Section 841.082 (Commitment Requirements) and to pay monthly to the Council on Sex Offender Treatment (council) the amount determined by the council necessary to defray the cost of operating the service with respect to the person during the subsequent month. Requires the council to immediately transfer the money to the appropriate service provider.

SECTION 8. Amends Section 1.07(a), Penal Code, by adding Subdivision (50), to define "sexually violent offense."

SECTION 9. Amends Section 12.42(c), Penal Code, as follows:

(c) (1) Deletes an exception provided by Subdivision (2).

(2) Requires a defendant to be punished by life imprisonment, notwithstanding Subdivision (1), if the defendant is convicted of an offense under Sections 21.11 (Indecency With a Child), 22.021 (Aggravated Sexual Assault), 22.011 (Sexual Assault), or 43.25 (Sexual Performance By a Child), Penal Code. Deletes existing text requiring said punishment for a felony under Section 21.11 or 22.011, Penal Code.

(3) Requires a defendant to be punished for a capital felony, notwithstanding Subdivision (1) or (2), if it is shown on the trial of a sexually violent offense punishable as a first degree felony that the victim of the offense is younger than 14 years old at the time the offense is committed or that the defendant has previously been finally convicted of a sexually violent offense, the victim of which was younger than 14 years of age, or a substantially similar offense under the laws of another state. Requires said punishment if the defendant has previously been convicted of an offense under the laws of another state containing

substantially similar elements of s sexually violent assault, the victim of which was younger than 14 years old at the time the offense was committed.

SECTION 10. Amends Subchapter D, Chapter 12, Penal Code, by adding Section 12.50, as follows:

Sec. 12.50. PENALTY FOR CERTAIN SEX OFFENSES COMMITTED AGAINST CHILD. (a) Provides that this section does not apply to a first degree felony punishable under Section 12.42 (Penalty for Repeat or Habitual Felony Offenders).

(b) Provides that the minimum term of imprisonment for the offense is increased to 25 years if it is shown on the trial of a sexually violent offense punishable as a first degree felony that the victim is younger than 14 years old at the time the offense is committed.

SECTION 11. Amends Section 20.04(d), Penal Code, to provide that this subsection does not apply if the victim is younger than 14 years old at the time the offense is committed.

SECTION 12. Amends Section 21.11(d), Penal Code, to provide that an offense under Subsection (a)(1) (relating to sexual contact with a child) is a second degree felony, unless the victim is younger than 14 years old at the time of the offense, in which case the offense is a first degree felony.

SECTION 13. Amends Section 38.05, Penal Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that an offense under this section (Hindering Apprehension or Prosecution) is a Class A misdemeanor, except as provided by Subsection (d).

(d) Adds an offense under Section 62.102 (Failure to Comply with Registration Requirements) to the list of conditions under which an offense under this section is a third degree felony.

SECTION 14. Amends Sections 43.25(c) and (e), Penal Code, as follows:

(c) Provides that an offense under Subsection (b) (relating to a person employing, authorizing, inducing a child to perform sexual acts) is a second degree felony, unless the victim is younger than 14 years old at the time of the offense, in which case the offense is a first degree felony.

(e) Provides that an offense under Subsection (d) (relating to a person producing, directing, or promoting a performance in which a child performs sexual acts) is a third degree felony, unless the victim is younger than 14 years old at the time of the offense, in which case the offense is a first degree felony.

SECTION 15. Makes application of this Act prospective.

SECTION 16. Effective date: September 1, 2007.