

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 5
By: Deuell et al.
Criminal Justice
3/14/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.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, C.S.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. Requires this Act to be known as the Jessica Lunsford Act.

SECTION 2. Amends Article 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. Sets forth the statute of limitations for certain offenses. Adds sexual assault under Section 22.011(a)(2), Penal Code, aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code, and indecency with a child under Section 21.11(a), Penal Code, to the offenses for which there is no statute of limitation. 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 (5). Provides that the statute of limitation is 20 years from the 18th birthday of the victim for certain offenses, including sexual performance by a child, aggravated kidnapping if the defendant committed the offense with the intent to violate or abuse the victim sexually, or burglary, if the victim is younger than 17 at the time the offense is committed and the offense is committed with the intent to violate or abuse the victim sexually. Deletes existing text relating to a statute of limitation of 10 years from the 18th birthday of the victim of the offense and offenses relating to indecency with a child or aggravated sexual assault.

SECTION 3. 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 4. Amends Section 2, Article 37.071, Code of Criminal Procedure, by amending Subsections (a) through (e) and (g) and adding Subsection (j), as follows:

(a) Sets forth procedural requirements regarding a defendant tried and found guilty for a capital offense. Prohibits the court, the attorney representing the state, the defendant, and his or her counsel from informing a juror or prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (b), (e), or (j), rather than Subsection (c).

(b) Requires the court to submit, on conclusion of the presentation of the evidence, certain issues to the jury, including issues in cases that are not described by Subsection (j).

(c) Requires the state, as applicable, to prove each issue submitted under Subsection (b), or Subsections (b)(1) and (j) beyond a reasonable doubt, and requires the jury to return a special verdict of "yes" or "no" on each of those issues.

(d) Requires the court, as applicable, to charge the jury that in deliberating certain issues, including those submitted under Subsections (b)(1) and (j), the jury is required to consider all evidence admitted at the guilt or innocence and the punishment stages. Makes conforming changes.

(e)(1) Makes conforming changes.

(g) Makes conforming changes.

(j) Requires the court, in certain capital cases and under certain circumstances, to submit to the jury the issue of whether the defendant actually engaged in the prohibited conduct of which the defendant was found guilty, or that he or she did not actually engage in the prohibited conduct but intended that the offense be committed against the victim or another intended victim.

SECTION 5. Amends Article 44.251(a), Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 6. Amends Subchapter C, Chapter 499, Government Code, by adding Section 499.054, as follows:

Sec. 499.054. SEX OFFENDER TREATMENT PROGRAM. (a) Defines "sex offender treatment program."

(b) Requires the Texas Department of Criminal Justice (TDCJ) to establish a sex offender treatment program to treat inmates who are serving a sentence for an offense punishable under Section 12.50 or 12.42(c)(2), Penal Code, and who are not eligible for parole. Requires TDCJ to require an inmate described by this subsection to participate in and complete the program before being released from TDCJ.

(c) Authorizes TDCJ to establish a sex offender treatment program to treat inmates other than those described by Subsection (b).

SECTION 7. 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 8. 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 9. 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 10. 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 11. Amends Section 1.07(a), Penal Code, by adding Subdivision (50), to define "sexually violent offense."

SECTION 12. 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 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 a sexually violent assault, the victim of which was younger than 14 years old at the time the offense was committed.

SECTION 13. 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 14. 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 15. 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 16. 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 17. Makes application of this Act prospective.

SECTION 18. Effective date: September 1, 2007.