

BILL ANALYSIS

Senate Research Center
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S.B. 568
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In many institutional settings, children are vulnerable to sexual abuse from authority figures and lack the power to seek justice when these violations occur. Even when these children come forward, authority figures often fail to address the abuse, enabling sexual predators to continuously and systematically prey upon young children.

State law in Texas does not adequately address failures to report sexual offenses committed against a child, and as a result, children who are the victims of these offenses can be subject to further abuse. S.B. 568 seeks to address these concerns by expanding the conduct that constitutes a failure to report certain sexual offenses committed against a child and by increasing the penalties for such conduct.

S.B. 568 clarifies the definition of "sexual offense against a child" to include continuous sexual abuse, indecency, sexual assault, and aggravated sexual assault committed against a child. This bill amends the Penal Code to replace the Class A misdemeanor offense of failure to stop or report aggravated sexual assault of a child, with the state jail felony offense of failure to report certain sexual offenses committed against a child.

In order to address the effects of silence from individuals in these situations, this bill would establish a second degree felony if an adult's conduct leads to a subsequent sexual offense against a child. Additionally, the adult commits a third degree felony for the offense if they knowingly hindered the investigation or prosecution of the sexual offense against a child. However, it is a defense to prosecution under this law if the person complied with a duty to report the sexual offense.

As proposed, S.B. 568 amends current law relating to the prosecution of and punishment for the criminal offense of failure to report certain sexual offenses committed against a child and increases criminal penalties.

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 Section 38.17, Penal Code, as follows:

Sec. 38.17. New heading. FAILURE TO REPORT CERTAIN SEXUAL OFFENSES COMMITTED AGAINST A CHILD. (a) Defines "sexual offense against a child."

(b) Creates this subsection from existing text. Provides that a person 18 years of age or older, rather than a person other than a person who has a relationship with a child described by Section 22.04(b) (relating to providing that an omission that causes a certain injury is conduct constituting an offense if the actor has a duty to act or the actor has assumed care, custody, or control of the individual) commits an offense if the person:

- (1) knows that another person has committed a sexual offense against a child; and
- (2) fails to immediately report the commission of the offense to a law enforcement agency or to the Department of Family and Protective Services (DFPS).

Deletes existing text providing that a person commits an offense if the actor observes the commission or attempted commission of an offense prohibited by Section 21.02 (Continuous Sexual Abuse of Young Child or Children) or 22.021(a)(2)(B) (relating to the victim being younger than 14 years of age) under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against the child; the actor fails to assist the child to a peace officer; and the actor could assist the child or immediately report the commission of the offense without placing the actor in danger of suffering serious bodily injury or death.

(c) Creates this subsection from existing text. Provides that an offense under this section is a state jail felony, except that the offense is:

(1) except as provided by Subdivision (2), a felony of the third degree if it is shown on the trial of the offense that the actor also engaged in conduct intended to hinder the investigation or prosecution of the sexual offense against a child, including by:

(A) altering, destroying, or concealing any record, document, or thing to impair its verity, legibility, or availability as evidence in the investigation or prosecution;

(B) interfering with the willingness of a witness to the sexual offense to report that offense to, or cooperate in the investigation or prosecution of the offense with, a law enforcement agency or the Department of Family and Protective Services (DFPS) or otherwise preventing the report by or cooperation of the witness;

(C) harboring or concealing the person who committed the sexual offense;

(D) providing or aiding in providing the person who committed the sexual offense with a means to avoid investigation or arrest, including by assisting the person in relocating to another area; or

(E) providing false information regarding the sexual offense to a law enforcement agency or to DFPS; or

(2) a felony of the second degree if:

(A) the actor engaged in conduct described by Subdivision (1);

(B) the person who committed the sexual offense against a child commits a subsequent sexual offense against a child; and

(C) the actor's failure to report the sexual offense against a child enabled or facilitated the person's commission of the subsequent offense. Deletes existing text providing that an offense under this section is a Class A misdemeanor.

(d) Provides that, for the purposes of this section, the actor is presumed to have known that another person has committed a sexual offense against a child if:

(1) the child tells the actor that the other person has engaged in conduct that constitutes a sexual offense listed in Subsection (a); or

(2) the actor engaged in conduct described by Subsection (c)(1) with respect to the sexual offense.

(e) Provides that it is a defense to prosecution under this section that the actor complied with a duty to report the sexual offense against a child to a law enforcement agency or to DFPS as required by other law.

(f) Provides that it is an affirmative defense to prosecution under this section that the actor promptly reported the sexual offense against a child to a professional, as defined by Section 261.101(b) (relating to individuals who are licensed or certified by the state or employed by a facility licensed, certified, or operated by the state and who have direct contact with children being required to report child abuse or neglect), Family Code, or to a family violence center, as defined by Section 93.001 (Definitions), Family Code.

(g) Provides that it is an exception to the application of this section that:

(1) the person who the actor knows has committed the sexual offense against a child has previously been convicted of any of the following offenses committed against the actor:

(A) an offense listed in Article 42A.054(a) (relating to the applicability of limitation on judge-ordered community supervision for certain offenses), Code of Criminal Procedure; or

(B) an offense under Section 22.01 (Assault) or 22.02 (Aggravated Assault); or

(2) at the time of the actor's act of omission described by Subsection (b)(2) or at any time before that act occurred, the person who the actor knows has committed the sexual offense against a child was the subject of an order issued to protect the actor:

(A) under Subchapter A (Protective Order for Victims of Sexual Assault or Abuse, Stalking, or Trafficking), Chapter 7B (Protective Orders), Code of Criminal Procedure, Article 17.292 (Magistrate's Order for Emergency Protection), Code of Criminal Procedure, Section 6.504 (Protective Orders), Family Code, Chapter 83 (Temporary Ex Parte Orders), Family Code, Chapter 85 (Issuance of Protective Order), Family Code, or Subchapter F (Protective Order in Certain Cases of Abuse or Neglect), Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code; or

(B) by another jurisdiction as provided by Chapter 88 (Uniform Interstate Enforcement of Protective Orders Act), Family Code.

(h) Provides that if conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2021.