

APPENDIX A

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00297-CR

Ex parte Paul Vallejo

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 167TH JUDICIAL DISTRICT
NO. D-1-DC-16-100296, THE HONORABLE P. DAVID WAHLBERG, JUDGE PRESIDING

MEMORANDUM OPINION

Appellant Paul Vallejo has been charged by indictment with three counts of aggravated sexual assault of a child. *See* Tex. Penal Code § 22.021(a)(1)(B), (2)(B). Appellant filed a pretrial application for writ of habeas corpus, asserting that the statue of limitations and the constitutional prohibition against ex post facto laws bar prosecution of the charged offenses. *See* Tex. Const. art. I, § 12; Tex. Code Crim. Proc. arts. 11.01, 11.08. After conducting a hearing, the trial court denied habeas relief.¹ We affirm the trial court's order denying appellant's pretrial application for writ of habeas corpus.

¹ The record contains a record of a writ hearing that indicates that appellant previously filed a pretrial application for writ of habeas corpus and that the trial court heard and denied that application. No record of that previous hearing appears in the record before us. The writ-hearing record further reflects that appellant re-filed his pretrial application for writ of habeas corpus because there were "technical errors in the proceeding" before. The denial of this subsequent pretrial application is the subject of this appeal.

STANDARD OF REVIEW

In reviewing a trial court’s decision on a pretrial application for writ of habeas corpus, we review the facts in the light most favorable to the trial court’s ruling and, absent an abuse of discretion, uphold the ruling. *Ex parte Wheeler*, 203 S.W.3d 317, 324 (Tex. Crim. App. 2006); *Ex parte Ali*, 368 S.W.3d 827, 830 (Tex. App.—Austin 2012, pet. ref’d). An abuse of discretion does not occur unless the trial court acts “arbitrarily or unreasonably” or “without reference to any guiding rules and principles,” *State v. Hill*, 499 S.W.3d 853, 865 (Tex. Crim. App. 2016) (quoting *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990)), or unless the trial court’s decision “falls outside the zone of reasonable disagreement,” *Johnson v. State*, 490 S.W.3d 895, 908 (Tex. Crim. App. 2016).

DISCUSSION

In his habeas application, appellant first maintained that the prosecution was barred by the statute of limitations in effect at the time the alleged offenses were committed. He next contended that the prosecution for the charged offenses subjected him to an ex post facto violation. He raises those arguments in two points of error on appeal.

Statute of Limitations

Pretrial habeas, followed by an interlocutory appeal, is an extraordinary remedy. *Ex parte Ingram*, 533 S.W.3d 887, 891 (Tex. Crim. App. 2017); *Ex parte Perry*, 483 S.W.3d 884, 895 (Tex. Crim. App. 2016); *Ex parte Doster*, 303 S.W.3d 720, 724 (Tex. Crim. App. 2010). Thus,

“[a] defendant may use a pretrial writ of habeas corpus only in very limited circumstances.” *Ex parte Smith*, 178 S.W.3d 797, 801 (Tex. Crim. App. 2005).

Generally, a pretrial writ of habeas corpus may not be used to test the sufficiency of the charging instrument. *Id.* at 801–02; *accord Perry*, 483 S.W.3d at 895; *Ex parte Ellis*, 309 S.W.3d 71, 79 (Tex. Crim. App. 2010); *Doster*, 303 S.W.3d at 724; *see Ex parte Tamez*, 38 S.W.3d 159, 160 (Tex. Crim. App. 2001) (“We have long held that when there is a valid statute or ordinance under which a prosecution may be brought, habeas corpus is generally not available prior to trial to test the sufficiency of the complaint, information, or indictment.”). An exception against testing the sufficiency of the charging instrument applies when prosecution of the offense is barred by the statute of limitations. *Doster*, 303 S.W.3d at 724; *Smith*, 178 S.W.3d at 802; *see Ex parte Weise*, 55 S.W.3d 617, 620 (Tex. Crim. App. 2001) (noting that “when the pleading, on its face, shows that the offense charged is barred by limitations . . . the applicant is challenging the trial court’s power to proceed”). Limitations is an absolute bar to prosecution. *See Smith*, 178 S.W.3d at 802 n.17 (“[T]here is no authority in law to prosecute any citizen of Texas for the violation of the law after the period of limitation has intervened.” (quoting *Ex parte Hoard*, 140 S.W. 449, 451 (Tex. Crim. App. 1911)). “There is no point in wasting scarce judicial and societal resources or putting the defendant to great expense, inconvenience, and anxiety if the ultimate result is never in question.” *Smith*, 178 S.W.3d at 802. Thus, when the face of the pleading shows that the offense charged is barred by limitations, habeas relief should be granted. *Id.*; *Tamez*, 38 S.W.3d at 160.

The indictment in this case charges appellant with committing the offenses of aggravated sexual assault of a child against V.G. on or about May 1, 1999 (Count I), July 1, 1999

(Count II), and August 16, 1999 (Count III). Under the provisions in effect at the time of these alleged offenses, the statute-of-limitations period for aggravated sexual assault of a child was ten years from the 18th birthday of the victim. *See* Act of May 24, 1997, 75th Leg., R.S., ch. 740, § 1, art. 12.01, 1997 Tex. Gen. Laws 2403, 2403 (current version at Tex. Code Crim. Proc. art. 12.01(1)(B)).

The record reflects that V.G. was born on October 19, 1985. Ten years from her 18th birthday was October 19, 2013. Thus, under the provision in effect at the time of the charged offenses, the limitation period was set to expire on October 19, 2013. The indictment in this case was returned on January 30, 2017. Given that the indictment was returned after V.G.'s 28th birthday, appellant contended that the statute of limitations bars prosecution of the alleged offenses of aggravated sexual assault of a child because the limitation period had expired prior to the return of the indictment.

However, the Legislature may extend the statute of limitations for prosecution of a criminal offense after the offense has been committed but before the expiration of the original limitation period. *Lindsey v. State*, 760 S.W.2d 649, 653 (Tex. Crim. App. 1988); *Archer v. State*, 577 S.W.2d 244 (Tex. Crim. App. 1979). In 2007, before the statute of limitations had run on the 1999 offenses, the Legislature amended article 12.01 of the Texas Code of Criminal Procedure and provided that, effective September 1, 2007, no statute of limitations bars the presentment of felony indictments for the offenses of sexual assault of a child, aggravated sexual assault of a child, or indecency with a child. *See* Act of May 18, 2007, 80th Leg., R.S., ch. 593, § 1.03, art. 12.01, 2007 Tex. Gen. Laws 1120, 1120 (current version at Tex. Code Crim. Proc. art. 12.01(1)(B)).

Unless the Legislature expressly provides otherwise, a statute extending the period of limitation applies to all offenses not time-barred at the time of the passage of the act so that a prosecution may be commenced at any time within the new duly established limitation period even if the old period of limitation has expired.² *Lindsey*, 760 S.W.2d at 653; *Archer*, 577 S.W.2d at 244. Here, the former limitation period applicable to the charged 1999 offenses—V.G.’s 18th birthday plus ten years—had not yet expired on September 1, 2007. Therefore, the trial court correctly determined that the new limitation period for the offense of aggravated assault of a child applied so that the instant prosecution is not barred by limitations.

Accordingly, we conclude that the trial court did not abuse its discretion by denying appellant’s pretrial habeas application on this ground. *See, e.g., Tamez*, 38 S.W.3d at 161 (concluding that accused was not entitled to pretrial habeas corpus relief because pleading did not show on its face that charged offense was barred by limitations). We overrule appellant’s first point of error.

Ex Post Facto

Both the United States and Texas constitutions prohibit the State from applying an ex post facto law. *See* U.S. Const. art. I, § 9, cl. 3 (prohibiting passage of ex post facto law); Tex. Const. art. I, § 16 (same); *see also* U.S. Const. art. I, § 10, cl. 1 (prohibiting states from passing ex post facto law). An ex post facto law is one that: (1) punishes as a crime an act previously

² In the 2007 amendment, the Legislature expressly provided that the new limitation period did not apply to an offense if the prosecution of the offense became barred by limitations before September 1, 2007. *See* Act of May 18, 2007, 80th Leg., R.S., ch. 593, § 4.01(c), 2007 Tex. Gen. Laws 1120, 1148.

committed that was innocent when done; (2) aggravates a crime, or makes it greater than it was, when committed; (3) changes the punishment and inflicts greater punishment than the law attached to the criminal offense when committed; or (4) deprives a person charged with a crime of any defense available at the time the act was committed. *See Peugh v. United States*, 569 U.S. 530, 538–39 (2013); *Collins v. Youngblood*, 497 U.S. 37, 41–44 (1990); *Rodriguez v. State*, 93 S.W.3d 60, 66 (Tex. Crim. App. 2002); *Ex parte Davis*, 947 S.W.2d 216, 219–20 (Tex. Crim. App. 1996); *see also Grimes v. State*, 807 S.W.2d 582, 583–84, 586–87 (Tex. Crim. App. 1991) (explaining that law is ex post facto if it is “passed ‘after the fact’ or commission of an act” and retrospectively changes consequences pertaining to act and that Texas courts have adopted federal definition of ex post facto when interpreting Texas constitutional provision by determining “whether a statute assigns more disadvantageous criminal or penal consequences to an act than did the law in place when the act occurred”).

In his habeas application, in addition to claiming that the instant prosecution is barred by limitations, appellant further argued that the prosecution is barred under the Ex Post Facto clauses of the United States and Texas constitutions, claiming that “[b]y changing the law the Legislature has changed the legal consequences or relations in [appellant’s] case . . . and deprive[d] him of a defense that was in effect at the time of the alleged commission of the offense.” Appellant asserts that the elimination of the period of limitation altogether in the 2007 amendment, as opposed to simply an extension of the limitation period, deprived him of a defense that was in effect at the time

of the commission of the alleged offenses.³ However, while a statute of limitations is “in effect” when a criminal offense is committed, no statute-of-limitations defense is available to a defendant at the time of the criminal offense. Such a defense accrues only at some later point (if at all); it is not available at the time the criminal act was committed. Thus, changing the statute of limitations and removing the limitation period did not deprive appellant of a defense that was available at the time he allegedly committed the charged offenses in 1999.

Moreover, statutes of limitations are measures of public policy “entirely subject to the will of the Legislature.” *Phillips v. State*, 362 S.W.3d 606, 612 (Tex. Crim. App. 2011), *overruled on other grounds by Ex parte Heilman*, 456 S.W.3d 159, 166–69 (Tex. Crim. App. 2015) (quoting *Vasquez v. State*, 557 S.W.2d 779, 781 n.2 (Tex. Crim. App. 1977)); *see Ex parte Matthews*, 933 S.W.2d 134, 136 (Tex. Crim. App. 1996), *overruled on other grounds by Proctor v. State*, 967 S.W.2d 840, 844–45 (Tex. Crim. App. 1998) (“Statutes of limitation are acts of grace in that the sovereign surrenders its right to prosecute (or its right to prosecute at its discretion); thus they are considered to be equivalent to acts of amnesty.” (quoting *Vasquez*, 557 S.W.2d at 781)); *Martinez v. State*, No. 03-12-00273-CR, 2014 WL 1208774, at *2 (Tex. App.—Austin Mar. 20, 2014, no pet.) (mem. op., not designated for publication) (“[T]he statute of limitations is a procedural rule [] in the nature of a defense” that operates as an “act of grace for the benefit of potential defendants, a voluntary surrendering by the people of their right to prosecute.” (quoting

³ Specifically, appellant asserts in his brief, “There is no period of time which will trigger the statute of limitations for this offense[;] a potential defense that did exist at the time of the alleged commission of this indicted offense[] was removed by the State to make the prosecution of said crime easier for the sovereign.”

Proctor v. State, 967 S.W.2d 840, 843 (Tex. Crim. App. 1998)). Consequently, statutes of limitations “may be changed or repealed without violating constitutional prohibitions against ex post facto laws in any case where a right to acquittal has not been absolutely acquired by the completion of the period of limitations.” *Phillips*, 362 S.W.3d at 612 (quoting *Vasquez*, 557 S.W.2d at 781 n.2). Thus, the limitation period may be extended or removed by the Legislature, and a prosecution within the new time period will be permitted if the limitation period had not already expired before the law was changed. *See id.* at 613; *Matthews*, 933 S.W.2d at 136.

The 2007 amendment to article 12.01 at issue here does not violate the constitutional prohibition against ex post facto laws. Further, because the limitation period for the charged aggravated sexual assaults in this case had not expired before the limitation period was amended by the Legislature, the instant prosecution does not violate the constitutional prohibition against ex post facto laws. *See, e.g., Latham v. State*, No. 02-04-230-CR, 2006 WL 20398, at *3 (Tex. App.—Fort Worth Jan. 5, 2006, no pet.) (mem. op., not designated for publication).

For the above reasons, we conclude that the trial court did not abuse its discretion by denying appellant’s pretrial habeas application on this ground. Accordingly, we overrule appellant’s second point of error.

CONCLUSION

Having concluded that the prosecution for the charged offenses is not barred by the applicable statute of limitations and that the 2007 amendment to article 12.01 does not violate the constitutional prohibition against ex post facto laws, we further conclude that the trial court did not

abuse its discretion by denying appellant's pretrial application for writ of habeas corpus. Accordingly, we affirm the trial court's order denying habeas relief.

Cindy Olson Bourland, Justice

Before Justices Puryear, Goodwin, and Bourland

Affirmed

Filed: November 14, 2018

Do Not Publish

APPENDIX B

CAUSE NO. D1DC 16-100296

Filed in The District Court
of Travis County, Texas
on 2-20-18
at 11:40 A.M.
Velva L. Price, District Clerk

THE STATE OF TEXAS
VS.
PAUL VALLEJO

IN THE 167th DISTRICT
COURT OF
TRAVIS COUNTY, TEXAS

AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS AND EX POST FACTO

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PAUL VALLEJO, Applicant in the above entitled and numbered cause, by and through his Attorney of Record, Ariel Payan, and moves the Court to grant a writ of Habeas Corpus and in support thereof, would respectfully show unto the Court as follows:

I.

Applicant is illegally restrained and confined in the Travis County Detention Center, in Del Valle Texas, in Travis County, Texas by the Respondent, Sally Hernandez, Sheriff of Travis County.

II.

Applicant is being held by Respondent on a Aggravated Sexual Assault warrant from November 2016. Applicant has been in custody since November 28, 2016.

III.

Applicant was indicted on January 30, 2017, and said indictment is attached as Exhibit A. Said indictment fails on its face to show that the offense is not barred by statute of limitations in effect at the time of the stated alleged offense, contained therein. Hearing was held and evidence and argument presented to the trial court as follows:

IV.

A. Facts

Defendant has been arrested for an offense alleged to have occurred on or about May 1, 1999, namely aggravated sexual assault of a child under Tex. Penal Code section 22.021. The complainant's date of birth is October 19, 1985, and her 28th birthday was on October 19, 2013. The complainant's first outcry of the abuse was on January 25, 2016. The complainant knew Defendant's

name and address before the alleged offense date, as he was a neighbor to her family. The complainant conceived and bore a male child, which is alleged to be the natural child of Defendant. The complainant and the Defendant have had contact and the Defendant has had visitation with the child since 2013. Indictment in this cause was filed on January 30, 2017.

B. Statute of Limitations

The offense is alleged to have occurred in May through August of 1999. Complainant was 13 years of age at the time of the alleged offense. At the time of the alleged offense, the statute of limitations, enacted in 1997, was ten years past the 18th birthday of the complainant. See, Acts 1997, 75th Leg ., R.S., ch. 740, § 1, 1997 Tex.Gen.Laws 2403 [formerly Tex.Code Crim .Proc.Ann. art. 12.01(5)]. The complainant would have had to make an accusation on or before her 28th birthday, which was in 2003. Complaint was made in 2016, and therefore exceeded the statute of limitations in effect at the time of the alleged offense.

Statutes of limitations reflect “a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict.” Stogner v. California, 539 U.S. 607, 615, 123 S.Ct. 2446 (2003). That judgment “typically rests, in large part, upon evidentiary concerns—for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.” Id.

Prosecution is barred under CCP 12.01(5) and 27.08(2). See Proctor v. State, 967 W.W.2d 840, 844 (TexCr.App. 1998). The state has not pled any factors which would toll the statute of limitations. This Court lacks subject matter jurisdiction in this cause, and the indictment should be dismissed with prejudice.

C. Ex Post Facto

The acts alleged in the indictment are barred by both State and Federal Constitution, under the ex post facto clauses therein. See, Article 1 Sec. 9; Art. I Sec. 10, Tex. Const Art I Sec. 16, see also Stogner v. California, 539 U.S. 607 (2003), and Graham v. Florida, 560 U.S. 48, 71 (2010)

An ex post facto law (1) punishes as a crime an act previously committed which was innocent

when done, (2) changes the punishment and inflicts a greater punishment than the law attached to a criminal offense when committed, or (3) deprives a person charged with a crime of any defense available at the time the act was committed. *Johnson v. State*, 930 S.W.2d 589, 591 (Tex.Crim.App.1996) (citing *Collins v. Youngblood*, 497 U.S. 37, 42-43, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990)). An ex post facto law is one “passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed.” BLACK’S LAW DICTIONARY 580 (6th ed. 1990). The United States and Texas constitutions both forbid ex post facto laws. U.S. CONST. art. I, §§ 9 cl. 3, 10 cl. 1; TEX. CONST. art. I, § 16. *Calder v. Bull*, 3 U.S. 386, 390-391, 1 L. Ed. 648, 3 Dall. 386 (1798). The prohibition as to ex post facto laws applies not only to laws that are facially retroactive, but also to laws that are applied retroactively. *Phillips v. State*, 362 S.W.3d 606, 610 (Tex. Crim. App. 2011). The constitutional prohibition of ex post facto laws has been held to be a Marin category-one, “absolute requirement” that is not subject to forfeiture by the failure to object. See *Leppert v. State*, 908 S.W.2d 217 (Tex. Crim. App. 1995), see also *Sanchez v. State*, 120 S.W.3d 359, 365-66 (Tex. Crim. App. 2003).

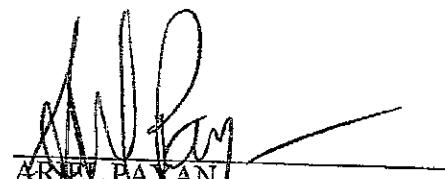
Defendant is entitled to be prosecuted under the law in effect at the time of the commission of the offense. *Ex parte Mabry*, 137 S.W.3d 58 at 60 (Tex.Cr.App. 2004). By changing the law the Legislature has changed the legal consequences or relations in Defendant’s case. Further it deprives him of a defense that was in effect at the time of the alleged commission of the offense.

V.

The courts have long held that when there is a valid statute under which a prosecution may be brought, habeas corpus is generally not available prior to trial to test the sufficiency of the complaint, or indictment. *Ex parte Mangrum*, 564 S.W.2 751, 752 (Tx.Cr.App. 1978). The courts have also recognized certain exceptions to this rule, including allowing challenges to a pleading if on its face, shows that the offense charged is barred by limitations. *Ex parte Tamez*, 38 S.W.3d. 159 (Tx.Cr.App. 2001). Applicant has a right for pre trial review of a trial court’s decision to allow prosecution on an indictment which is invalid on its face.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that this Honorable Court will grant and issue a Writ of Habeas Corpus to the Third Court of Appeals for review of the attached Indictment.

RESPECTFULLY SUBMITTED,

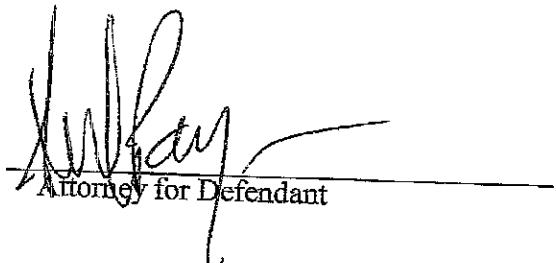


ARSEL PAYAN
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ATTORNEY FOR DEFENDANT
1012 Rio Grande
Austin, Texas 78701
512-478-3900
Fax 472-4102

CERTIFICATE OF SERVICE

As Attorney of Record for Defendant, I do hereby Certify that a true and correct copy of the above and foregoing document was this date provided to the Prosecution.

Date: February 20, 2018



Attorney for Defendant

CAUSE NO. D1DC 16-100296

THE STATE OF TEXAS , IN THE 167th DISTRICT
VS. , COURT OF
PAUL VALLEJO , TRAVIS COUNTY, TEXAS

**ORDER ON APPLICANT'S AMENDED WRIT OF HABEAS CORPUS
AND EX POST FACTO**

ON THE 20 day of Feb, 2018, came on to be heard Defendant's Amended Application for Writ of Habeas Corpus, and the Court being of the opinion that this Amended Application for Writ of Habeas Corpus be:

() GRANTED, and IT IS HEREBY ORDERED that said writ and findings be issued and the indictment in this case be dismissed with prejudice.

(✓) DENIED, to which ruling Defendant excepts, all findings and transcripts to be sent to the appropriate court of appeals.

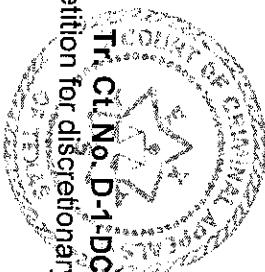
SIGNED:


JUDGE PRESIDING

Filed in The District Court
of Travis County, Texas
on 2-20-18
at 1140 A.M.
Velva L. Price, District Clerk

APPENDIX C

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



3/27/2019 COA No. 03-18-00297-CR
VALLEJO, EX PARTE PAUL Tr. Ct. No. D-1-DC-16-100296 PD-006119
On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

ARIEL PAYAN
ATTORNEY AT LAW
1012 RIO GRANDE
AUSTIN, TX 78701
* DELIVERED VIA E-MAIL *

APPENDIX D

1997 Tex. Sess. Law Serv. Ch. 740 (H.B. 921) (VERNON'S)

VERNON'S TEXAS SESSION LAW SERVICE 1997
Seventy-Fifth Legislature, 1997 Regular Session

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>
Changes in tables are made but not highlighted.

CHAPTER 740
H.B. No. 921
CRIMINAL PROCEDURE—LIMITATIONS—
SEXUAL OFFENSES AGAINST CHILDREN

AN ACT relating to the statute of limitations for certain sexual offenses committed against children.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

<< TX CRIM PRO Art. 12.01 >>

Art. 12.01. FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

- (1) no limitation: murder and manslaughter;
- (2) ten years from the date of the commission of the offense:
 - (A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;
 - (B) theft by a public servant of government property over which he exercises control in his official capacity;
 - (C) forgery or the uttering, using or passing of forged instruments;
 - (D) <<-sexual assault under Section 22.011(a)(2) of the Penal Code;->> indecency with a child <<+under Section 21.11(a)(2), Penal Code+>>;
- (3) seven years from the date of the commission of the offense:
 - (A) misapplication of fiduciary property or property of a financial institution;
 - (B) securing execution of document by deception;
- (4) five years from the date of the commission of the offense:
 - (A) theft, burglary, robbery;
 - (B) arson;

(C) sexual assault, except as provided in Subsection <<+(5)+>> <<- (2)(D)->> of this article;

(5) <<+ten years from the 18th birthday of the victim of the offense:+>>

<<+(A) indecency with a child under Section 21.11(a)(1), Penal Code;+>>

<<+(B) sexual assault under Section 22.011(a)(2), Penal Code;+>>

<<+(C) aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;+>>

<<+(6)+>> three years from the date of the commission of the offense: all other felonies.

SECTION 2. Article 12.03(d), Code of Criminal Procedure, is amended to read as follows:

<< TX CRIM PRO Art. 12.03 >>

(d) <<+Except as otherwise provided by this chapter, any+>> <<-Any->> offense that bears the title “aggravated” shall carry the same limitation period as the primary crime.

<< Note: TX CRIM PRO Art. 12.01 >>

SECTION 3. The change in law made by this Act does not apply to an offense if the prosecution of the offense became barred by limitation before the effective date of this Act. The prosecution of that offense remains barred as though this Act had not taken effect.

SECTION 4. This Act takes effect September 1, 1997.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 30, 1997, by a non-record vote; passed by the Senate on May 24, 1997, by a viva-voce vote.

Approved June 17, 1997.

Effective September 1, 1997.

TX LEGIS 740 (1997)

APPENDIX E

2017 Tex. Sess. Law Serv. Ch. 392 (S.B. 998) (VERNON'S)

VERNON'S TEXAS SESSION LAW SERVICE 2017

Eighty-Fifth Legislature, 2017 Regular Session

Additions are indicated by **Text**; deletions by **Text**.

Vetoed are indicated by Text;
stricken material by ~~Text~~.

CHAPTER 392
S.B. No. 998

STATUTE OF LIMITATIONS FOR THE OFFENSE OF EXPLOITATION
OF A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL

AN ACT

relating to the statute of limitations for the offense of
exploitation of a child, elderly individual, or disabled individual.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

<< TX CRIM PRO Art. 12.01 >>

Art. 12.01. FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

(A) murder and manslaughter;

(B) sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C) sexual assault, if:

(i) during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

- (ii) probable cause exists to believe that the defendant has committed the same or a similar sexual offense against five or more victims;
- (D) continuous sexual abuse of young child or children under Section 21.02, Penal Code;
- (E) indecency with a child under Section 21.11, Penal Code;
- (F) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;
- (G) trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code;
- (H) continuous trafficking of persons under Section 20A.03, Penal Code; or
- (I) compelling prostitution under Section 43.05(a)(2), Penal Code;

(2) ten years from the date of the commission of the offense:

- (A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;
- (B) theft by a public servant of government property over which he exercises control in his official capacity;
- (C) forgery or the uttering, using or passing of forged instruments;
- (D) injury to an elderly or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code;
- (E) sexual assault, except as provided by Subdivision (1);
- (F) arson;
- (G) trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code; or
- (H) compelling prostitution under Section 43.05(a)(1), Penal Code;

(3) seven years from the date of the commission of the offense:

- (A) misapplication of fiduciary property or property of a financial institution;
- (B) securing execution of document by deception;
- (C) a felony violation under Chapter 162, Tax Code;
- (D) false statement to obtain property or credit under Section 32.32, Penal Code;
- (E) money laundering;
- (F) credit card or debit card abuse under Section 32.31, Penal Code;
- (G) fraudulent use or possession of identifying information under Section 32.51, Penal Code;
- (H) exploitation of a child, elderly individual, or disabled individual under Section 32.53, Penal Code;**
- (I) Medicaid fraud under Section 35A.02, Penal Code; or**
- (J) [H] bigamy under Section 25.01, Penal Code, except as provided by Subdivision (6);**

(4) five years from the date of the commission of the offense:

- (A) theft or robbery;
- (B) except as provided by Subdivision (5), kidnapping or burglary;
- (C) injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;
- (D) abandoning or endangering a child; or
- (E) insurance fraud;

(5) if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

- (A) sexual performance by a child under Section 43.25, Penal Code;

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

(C) burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

(6) ten years from the 18th birthday of the victim of the offense:

(A) trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;

(B) injury to a child under Section 22.04, Penal Code; or

(C) bigamy under Section 25.01, Penal Code, if the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed; or

(7) three years from the date of the commission of the offense: all other felonies.

<< Note: TX CRIM PRO Art. 12.01 >>

SECTION 2. Article 12.01, Code of Criminal Procedure, as amended by this Act, does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act. The prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 3. This Act takes effect September 1, 2017.

Passed the Senate on April 3, 2017: Yeas 31, Nays 0; passed the House on May 19, 2017: Yeas 144, Nays 0, two present not voting.

Approved June 1, 2017.
Effective September 1, 2017.