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Elderly & Disabled Abandonment Act

HB 42

Bill Text

A BILL TO BE ENTITLED
AN ACT

relating to the criminal offense of abandoning or endangering a child, elderly individual, or disabled individual.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.041, Penal Code, is amended to read as follows:

Sec. 22.041. ABANDONING OR ENDANGERING A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Abandon"[~~,"abandon"~~] means to leave [~~a child~~] in any place without providing reasonable and necessary care a [~~for the~~] child, elderly individual, or disabled individual under circumstances under which no reasonable, similarly situated person [~~adult~~] would leave a child or individual of that age and ability.

(2) "Child," "elderly individual," and "disabled individual" have the meanings assigned by Section 22.04.

(b) A person commits an offense if the person, having custody, care, or control of a child, elderly individual, or disabled individual [~~younger than 15 years~~], [~~he~~] intentionally abandons the child or individual in any place under circumstances that expose the child or individual to an unreasonable risk of harm.

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(c) A person commits an offense if the person [~~he~~] intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child, elderly individual, or disabled individual [~~younger than 15 years~~] in imminent danger of death, bodily injury, or physical or mental impairment.

(c-1) For purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child, elderly individual, or disabled individual in imminent danger of death, bodily injury, or physical or mental impairment if:

(1) the person manufactured, possessed, or in any way introduced into the body of any person the controlled substance methamphetamine in the presence of the child, elderly individual, or disabled individual;

(2) the person's conduct related to the proximity or accessibility of the controlled substance methamphetamine to the child, elderly individual, or disabled individual and an analysis of a specimen of the child's or individual's blood, urine, or other bodily substance indicates the presence of methamphetamine in the body of the child or individual [~~child's body~~]; or

(3) the person injected, ingested, inhaled, or otherwise introduced a controlled substance listed in Penalty Group 1, Section 481.102, Health and Safety Code, or Penalty Group 1-B, Section 481.1022, Health and Safety Code, into the human body when the person was not in lawful possession of the substance as defined by Section 481.002(24) of that code.

(d) Except as provided by Subsection (e), an offense under Subsection (b) is:

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(1) a state jail felony if the actor abandoned the child, elderly individual, or disabled individual with intent to return for the child or individual; or

(2) a felony of the third degree if the actor abandoned the child, elderly individual, or disabled individual without intent to return for the child or individual.

(e) An offense under Subsection (b) is a felony of the second degree if the actor abandons the child, elderly individual, or disabled individual under circumstances that a reasonable person would believe would place the child or individual in imminent danger of death, bodily injury, or physical or mental impairment.

(f) An offense under Subsection (c) is a state jail felony.

(g) It is a defense to prosecution under Subsection (c) that the act or omission enables the child, elderly individual, or disabled individual to practice for or participate in an organized athletic event and that appropriate safety equipment and procedures are employed in the event.

(h) It is an exception to the application of this section for abandoning or endangering a child that the actor voluntarily delivered the child to a designated emergency infant care provider under Section 262.302, Family Code.

SECTION 2. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

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),

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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 the matter:

(a) has not yet been subjected to forensic DNA testing; or

(b) has been 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 sex offense against five or more victims;

(D) continuous sexual abuse of young child or disabled individual 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

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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 the public servant exercises control in the public servant's 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) or (7);

(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) fraudulent securing of document execution;

(C) a felony violation under Chapter 162, Tax Code;

(D) false statement to obtain property or credit

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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) health care fraud under Section 35A.02, Penal Code; or

(J) 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, elderly individual, or disabled individual; 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

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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;

(7) two years from the date the offense was discovered: sexual assault punishable as a state jail felony under Section 22.011(f)(2), Penal Code; or

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

SECTION 3. Section 201.062(a), Estates Code, is amended to read as follows:

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(a) A probate court may enter an order declaring that the parent of a child under 18 years of age may not inherit from or through the child under the laws of descent and distribution if the court finds by clear and convincing evidence that the parent has:

(1) voluntarily abandoned and failed to support the child in accordance with the parent's obligation or ability for at least three years before the date of the child's death, and did not resume support for the child before that date;

(2) voluntarily and with knowledge of the pregnancy:

(A) abandoned the child's mother beginning at a time during her pregnancy with the child and continuing through the birth;

(B) failed to provide adequate support or medical care for the mother during the period of abandonment before the child's birth; and

(C) remained apart from and failed to support the child since birth; or

(3) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3, Family Code, for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following sections of the Penal Code:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 19.04 (manslaughter);

(D) Section 21.11 (indecency with a child);

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(E) Section 22.01 (assault);

(F) Section 22.011 (sexual assault);

(G) Section 22.02 (aggravated assault);

(H) Section 22.021 (aggravated sexual assault);

(I) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(J) Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);

(K) Section 25.02 (prohibited sexual conduct);

(L) Section 43.25 (sexual performance by a child); or

(M) Section 43.26 (possession or promotion of child pornography).

SECTION 4. Section 1104.353(b), Estates Code, is amended to read as follows:

(b) It is presumed to be not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of:

(1) any sexual offense, including sexual assault, aggravated sexual assault, and prohibited sexual conduct;

(2) aggravated assault;

(3) injury to a child, elderly individual, or disabled individual;

(4) abandoning or endangering a child, elderly individual, or disabled individual;

(5) terroristic threat; or

(6) continuous violence against the family of the ward or

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incapacitated person.

SECTION 5. Section 161.001(b), Family Code, is amended to read as follows:

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

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(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i) Section 19.02 (murder);

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(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

(iv) Section 21.11 (indecency with a child);

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(x) Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);

(xi) Section 25.02 (prohibited sexual conduct);

(xii) Section 43.25 (sexual performance by a child);

(xiii) Section 43.26 (possession or promotion of child pornography);

(xiv) Section 21.02 (continuous sexual abuse of young child or disabled individual);

(xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and

(xvi) Section 43.05(a)(2) (compelling prostitution);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent

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provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:

(i) the department has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

(i) failed to complete a court-ordered substance abuse treatment program; or

(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

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(i) conviction of an offense; and

(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;

(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;

(T) been convicted of:

(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);

(iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or

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(iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

(U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; and

(2) that termination is in the best interest of the child.

SECTION 6. Section 262.2015(b), Family Code, is amended to read as follows:

(b) The court may find under Subsection (a) that a parent has subjected the child to aggravated circumstances if:

(1) the parent abandoned the child without identification or a means for identifying the child;

(2) the child or another child of the parent is a victim of serious bodily injury or sexual abuse inflicted by the parent or by another person with the parent's consent;

(3) the parent has engaged in conduct against the child or another child of the parent that would constitute an offense under the following provisions of the Penal Code:

(A) Section 19.02 (murder);

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(B) Section 19.03 (capital murder);

(C) Section 19.04 (manslaughter);

(D) Section 21.11 (indecency with a child);

(E) Section 22.011 (sexual assault);

(F) Section 22.02 (aggravated assault);

(G) Section 22.021 (aggravated sexual assault);

(H) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(I) Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);

(J) Section 25.02 (prohibited sexual conduct);

(K) Section 43.25 (sexual performance by a child);

(L) Section 43.26 (possession or promotion of child pornography);

(M) Section 21.02 (continuous sexual abuse of young child or disabled individual);

(N) Section 43.05(a)(2) (compelling prostitution); or

(O) Section 20A.02(a)(7) or (8) (trafficking of persons);

(4) the parent voluntarily left the child alone or in the possession of another person not the parent of the child for at least six months without expressing an intent to return and without providing adequate support for the child;

(5) the parent has been convicted for:

(A) the murder of another child of the parent and the offense would have been an offense under 18 U.S.C. Section 1111(a) if the

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offense had occurred in the special maritime or territorial jurisdiction of the United States;

(B) the voluntary manslaughter of another child of the parent and the offense would have been an offense under 18 U.S.C. Section 1112(a) if the offense had occurred in the special maritime or territorial jurisdiction of the United States;

(C) aiding or abetting, attempting, conspiring, or soliciting an offense under Paragraph (A) or (B); or

(D) the felony assault of the child or another child of the parent that resulted in serious bodily injury to the child or another child of the parent; or

(6) the parent is required under any state or federal law to register with a sex offender registry.

SECTION 7. Section 250.006(a), Health and Safety Code, is amended to read as follows:

(a) A person for whom the facility or the individual employer is entitled to obtain criminal history record information may not be employed in a facility or by an individual employer if the person has been convicted of an offense listed in this subsection:

(1) an offense under Chapter 19, Penal Code (criminal homicide);

(2) an offense under Chapter 20, Penal Code (kidnapping, unlawful restraint, and smuggling of persons);

(3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or disabled individual), or Section 21.11, Penal Code (indecency with a child);

(4) an offense under Section 22.011, Penal Code (sexual

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assault);

(5) an offense under Section 22.02, Penal Code (aggravated assault);

(6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);

(7) an offense under Section 22.041, Penal Code (abandoning or endangering a child, elderly individual, or disabled individual);

(8) an offense under Section 22.08, Penal Code (aiding suicide);

(9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);

(10) an offense under Section 25.08, Penal Code (sale or purchase of child);

(11) an offense under Section 28.02, Penal Code (arson);

(12) an offense under Section 29.02, Penal Code (robbery);

(13) an offense under Section 29.03, Penal Code (aggravated robbery);

(14) an offense under Section 21.08, Penal Code (indecent exposure);

(15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);

(16) an offense under Section 21.15, Penal Code (invasive visual recording);

(17) an offense under Section 22.05, Penal Code (deadly conduct);

(18) an offense under Section 22.021, Penal Code

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(aggravated sexual assault);

(19) an offense under Section 22.07, Penal Code (terroristic threat);

(20) an offense under Section 32.53, Penal Code (exploitation of child, elderly individual, or disabled individual);

(21) an offense under Section 33.021, Penal Code (online solicitation of a minor);

(22) an offense under Section 34.02, Penal Code (money laundering);

(23) an offense under Section 35A.02, Penal Code (health care fraud);

(24) an offense under Section 36.06, Penal Code (obstruction or retaliation);

(25) an offense under Section 42.09, Penal Code (cruelty to livestock animals), or under Section 42.092, Penal Code (cruelty to nonlivestock animals); or

(26) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

SECTION 8. Section 301.4535(a), Occupations Code, is amended to read as follows:

(a) The board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:

(1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04,

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Penal Code;

(2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;

(3) sexual assault under Section 22.011, Penal Code;

(4) aggravated sexual assault under Section 22.021, Penal Code;

(5) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code;

(6) aggravated assault under Section 22.02, Penal Code;

(7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code;

(8) intentionally, knowingly, or recklessly abandoning or endangering a child, elderly individual, or disabled individual under Section 22.041, Penal Code;

(9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony;

(10) an offense involving a violation of certain court orders or conditions of bond under Section 25.07, 25.071, or 25.072, Penal Code, punished as a felony;

(11) an agreement to abduct a child from custody under Section 25.031, Penal Code;

(12) the sale or purchase of a child under Section 25.08, Penal Code;

(13) robbery under Section 29.02, Penal Code;

(14) aggravated robbery under Section 29.03, Penal Code;

(15) an offense for which a defendant is required to register

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School
Rio Grande City High School

Senate Committee
N/A

Senate Author
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House Committee
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House Authors
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Lobbyist
Nicolas Guerra

Journalist
Samantha Estrada

as a sex offender under Chapter 62, Code of Criminal Procedure; or

(16) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

SECTION 9. The changes in law made by this Act apply 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 was committed before that date.

SECTION 10. This Act takes effect January 1, 2027.