

By: Middleton

S.B. No. 2554

A BILL TO BE ENTITLED

AN ACT

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2  
3 authorizing the state to take an interlocutory appeal to seek the  
4 overruling of *Stogner v. California*, 539 U.S. 607 (2003).

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

6 SECTION 1. Chapter 12, Code of Criminal Procedure, is  
7 amended by adding Article 12.08 to read as follows:

8 Art. 12.08. APPEAL TO OVERRULE STOGNER. (a) The state may  
9 bring criminal charges against a defendant that would otherwise be  
10 barred by the interpretation of the Ex Post Facto Clause adopted by  
11 the Supreme Court of the United States in *Stogner v. California*, 539  
12 U.S. 607 (2003).

13 (b) The state may take an immediate appeal directly to the  
14 Court of Criminal Appeals from an order dismissing any criminal  
15 prosecution as barred by the interpretation of the Ex Post Facto  
16 Clause adopted by the Supreme Court of the United States in *Stogner*  
17 *v. California*, 539 U.S. 607 (2003), and may appeal solely for the  
18 purpose of seeking reconsideration of *Stogner* by the Supreme Court  
19 of the United States on petition for certiorari.

20 (c) The Court of Criminal Appeals shall expedite the  
21 consideration of any appeal taken under Subsection (b) and resolve  
22 the appeal as quickly as possible.

23 (d) The Court of Criminal Appeals may summarily affirm,  
24 without requesting merits briefing or holding oral argument, if it

1 concludes or the state concedes that Stogner compels the dismissal  
2 of the criminal prosecution, and there is no reasonable grounds for  
3 distinguishing that ruling factually or legally. The state may  
4 indicate in its notice of appeal that Stogner compels the dismissal  
5 of the criminal prosecution, and there is no reasonable grounds for  
6 distinguishing that ruling factually or legally, and that the  
7 appeal is taken solely for the purpose of seeking reconsideration  
8 of Stogner on petition for certiorari.

9 (e) The state may petition for writ of certiorari from any  
10 decision of the Court of Criminal Appeals affirming the dismissal  
11 of the criminal prosecution under Stogner.

12 SECTION 2. If any provision of this Act or its application  
13 to any person or circumstance is held invalid, the invalidity does  
14 not affect other provisions or applications of this Act that can be  
15 given effect without the invalid provision or application, and to  
16 this end the provisions of this Act are declared to be severable.

17 SECTION 3. This Act takes effect September 1, 2023.