

By: Brown of Kaufman

H.B. No. 1074

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for the offense of obscenity.

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

SECTION 1. Sections 43.23(h) and (j), Penal Code, are amended to read as follows:

(h) The punishment for an offense under Subsection (a) is increased to the punishment for a felony of the third degree and the punishment for an offense under Subsection (c) is increased to the punishment for a state jail felony if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) that:

(1) are engaged in by:

(A) [~~(1)~~] a child younger than 18 years of age at the time the image of the child was made;

(B) [~~(2)~~] an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or

(C) [~~(3)~~] an image created, adapted, or modified to be the image of an identifiable child; or

(2) include conduct constituting murder, capital murder, sexual assault, or aggravated sexual assault.

(j) An attorney representing the state who seeks an increase in punishment under Subsection (h)(1)(C) [~~(h)(3)~~] is not required

1 to prove the actual identity of an identifiable child.

2 SECTION 2. The change in law made by this Act applies only
3 to an offense committed on or after the effective date of this Act.
4 An offense committed before the effective date of this Act is
5 covered by the law in effect at the time the offense was committed,
6 and the former law is continued in effect for that purpose. For
7 purposes of this section, an offense was committed before the
8 effective date of this Act if any element of the offense was
9 committed before that date.

10 SECTION 3. This Act takes effect September 1, 2005.