

By: Brown of Kaufman

H.B. No. 1074

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the punishment for the offense of obscenity.

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

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

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

13 (1) are engaged in by:

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

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

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

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

23 (j) An attorney representing the state who seeks an increase
24 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.