

Amend **HB 8** (House Committee Printing) by striking all below the enacting clause and substituting the following:

ARTICLE 1. CREATION OF OFFENSE AND PROSECUTION AND PUNISHMENT OF
OFFENSE

SECTION 1.01. Chapter 21, Penal Code, is amended by adding Section 21.02 to read as follows:

Sec. 21.02. CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN. (a) In this section, "child" has the meaning assigned by Section 22.011(c).

(b) A person commits an offense if:

(1) during a period that is 90 or more days in duration, the person commits an offense listed in Subsection (c) more than once or commits more than one offense listed in Subsection (c), regardless of whether the offenses are committed against one or more victims; and

(2) at the time of the commission of each of the offenses, the actor is 17 years of age or older and the victim of the offense is a child younger than 14 years of age.

(c) Any of the following offenses constitute an element of the offense described by Subsection (b):

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

(2) indecency with a child under Section 21.11(a)(1);

(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4); and

(6) sexual performance by a child under Section 43.25.

(d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific offenses listed in Subsection (c) were committed by the defendant or when those offenses were committed. The jury must agree unanimously that the defendant, during a period that is 90 or more days in duration, committed an offense listed in Subsection (c) more than one time or

committed more than one offense listed in Subsection (c).

(e) An offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) may not be prosecuted in the same criminal action unless the offense listed in Subsection (c):

(1) is charged in the alternative; or

(2) occurred outside the period in which the offense alleged under Subsection (b) was committed.

(f) A defendant may not be charged with more than one count under Subsection (b) if all of the specific offenses listed in Subsection (c) that are alleged to have been committed are alleged to have been committed against a single victim.

(g) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than five years older than:

(A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or

(B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;

(2) did not use duress, force, or a threat against a victim at the time of the commission of any of the offenses alleged as an element of the offense under Subsection (b); and

(3) at the time of the commission of any of the offenses alleged as an element of the offense under Subsection (b):

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or a section of this code described by Subsection (c).

(h) Except as provided by Subsection (i), an offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

(i) If it is shown on the trial of an offense under this section that the defendant has once before been convicted of an offense under this section, on conviction the defendant shall be

punished for a capital felony.

SECTION 1.02. Chapter 37, Code of Criminal Procedure, is amended by adding Article 37.072 to read as follows:

Art. 37.072. PROCEDURE IN REPEAT SEX OFFENDER CAPITAL CASE.

Sec. 1. If a defendant is found guilty in a capital felony case punishable under Section 21.02(i), Penal Code, in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment without parole.

Sec. 2. (a)(1) If a defendant is tried for an offense punishable under Section 21.02(i), Penal Code, in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment without parole. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(d) of this code, before the trial jury as soon as practicable. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that the court considers relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. This subdivision may not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death. The introduction of evidence of extraneous conduct is governed by the notice requirements of Section 3(g), Article 37.07. The court, the attorney representing the state, the defendant, or the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (b) or (e).

(2) Notwithstanding Subdivision (1), evidence may not be offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct.

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(2) in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, whether the defendant actually engaged in the conduct prohibited by Section 21.02, Penal Code, or did not actually engage in the conduct prohibited by that section but intended that the offense be committed against the victim or another intended victim.

(c) The state must prove beyond a reasonable doubt each issue submitted under Subsection (b) of this section, and the jury shall return a special verdict of "yes" or "no" on each issue submitted under Subsection (b) of this section.

(d) The court shall charge the jury that:

(1) in deliberating on the issues submitted under Subsection (b) of this section, it shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty;

(2) it may not answer any issue submitted under Subsection (b) of this section "yes" unless it agrees unanimously and it may not answer any issue "no" unless 10 or more jurors agree; and

(3) members of the jury need not agree on what particular evidence supports a negative answer to any issue submitted under Subsection (b) of this section.

(e)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) The court shall:

(A) instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole; and

(B) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release from the department on parole.

(f) The court shall charge the jury that in answering the issue submitted under Subsection (e) of this section, the jury:

(1) shall answer the issue "yes" or "no";

(2) may not answer the issue "no" unless it agrees unanimously and may not answer the issue "yes" unless 10 or more jurors agree;

(3) need not agree on what particular evidence supports an affirmative finding on the issue; and

(4) shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on an issue submitted under Subsection (e)(1), the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) or an affirmative finding on an issue submitted under Subsection (e)(1) or is unable to answer any issue submitted under Subsection (b) or (e), the court shall sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

(h) The judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals.

SECTION 1.03. 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) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or sexual assault, if during the investigation of the applicable 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

(C) 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;

(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 a child, elderly individual, 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 (6) [~~(5)~~]; or

(F) arson;

(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;
or

(C) a violation under Sections 162.403(22)-(39), Tax Code;

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

- (A) theft or ~~[, burglary,]~~ robbery;
- (B) except as provided by Subdivision (6), kidnapping or burglary;
- (C) injury to a child, elderly individual, 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) ten years from the 18th birthday of the victim of the offense of ~~[+~~
- ~~[(A)]~~ indecency with a child under Section 21.11(a)(2) ~~[21.11(a)(1) or (2)]~~, Penal Code; ~~[or~~
- ~~[(B) except as provided by Subdivision (1), sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code; or]~~
- (6) except as provided by Subdivision (1), 20 years from the 18th birthday of the victim of any of the following offenses if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed:
- (A) 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;
- (B) indecency with a child under Section 21.11(a)(1), Penal Code;
- (C) sexual assault under Section 22.011, Penal Code;
- (D) aggravated sexual assault under Section 22.021, Penal Code;
- (E) 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 listed in Subdivisions (1) through (4); and
- (F) sexual performance by a child under Section 43.25, Penal Code;
- (7) except as provided by Subdivision (1), for

continuous sexual abuse of young child or children under Section 21.02, Penal Code, 20 years from the 18th birthday of:

(A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or

(B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim; or

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

SECTION 1.04. Section 508.145, Government Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) An inmate serving a sentence for an offense under Section 21.02, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than 25 calendar years.

SECTION 1.05. Section 508.149(a), Government Code, is amended to read as follows:

(a) An inmate may not be released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of:

(1) an offense for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure;

(2) a first degree felony or a second degree felony under Section 19.02, Penal Code;

(3) a capital felony under Section 19.03, Penal Code;

(4) a first degree felony or a second degree felony under Section 20.04, Penal Code;

(5) an offense [~~a second degree felony or a third degree felony~~] under Section 21.11, Penal Code;

(6) a [~~second degree~~] felony under Section 22.011, Penal Code;

(7) a first degree felony or a second degree felony under Section 22.02, Penal Code;

- (8) a first degree felony under Section 22.021, Penal Code;
- (9) a first degree felony under Section 22.04, Penal Code;
- (10) a first degree felony under Section 28.02, Penal Code;
- (11) a second degree felony under Section 29.02, Penal Code;
- (12) a first degree felony under Section 29.03, Penal Code;
- (13) a first degree felony under Section 30.02, Penal Code; ~~[or]~~
- (14) a felony for which the punishment is increased under Section 481.134 or Section 481.140, Health and Safety Code; or
- (15) an offense under Section 21.02, Penal Code.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Section 16.0045(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A person must bring suit for personal injury not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates:

- (1) Section 22.011, Penal Code (sexual assault); ~~[or]~~
- (2) Section 22.021, Penal Code (aggravated sexual assault); or
- (3) Section 21.02, Penal Code (continuous sexual abuse of young child or children).

SECTION 2.02. Section 33.013(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

- (1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or
- (2) the defendant, with the specific intent to do harm

to others, acted in concert with another person to engage in the conduct described in the following provisions of the Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:

- (A) Section 19.02 (murder);
- (B) Section 19.03 (capital murder);
- (C) Section 20.04 (aggravated kidnapping);
- (D) Section 22.02 (aggravated assault);
- (E) Section 22.011 (sexual assault);
- (F) Section 22.021 (aggravated sexual assault);
- (G) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (H) Section 32.21 (forgery);
- (I) Section 32.43 (commercial bribery);
- (J) Section 32.45 (misapplication of fiduciary property or property of financial institution);
- (K) Section 32.46 (securing execution of document by deception);
- (L) Section 32.47 (fraudulent destruction, removal, or concealment of writing); ~~[or]~~
- (M) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher; or
- (N) Section 21.02 (continuous sexual abuse of young child or children).

SECTION 2.03. Section 41.008(c), Civil Practice and Remedies Code, is amended to read as follows:

(c) This section does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

- (1) Section 19.02 (murder);
- (2) Section 19.03 (capital murder);
- (3) Section 20.04 (aggravated kidnapping);
- (4) Section 22.02 (aggravated assault);
- (5) Section 22.011 (sexual assault);

- (6) Section 22.021 (aggravated sexual assault);
- (7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);
- (8) Section 32.21 (forgery);
- (9) Section 32.43 (commercial bribery);
- (10) Section 32.45 (misapplication of fiduciary property or property of financial institution);
- (11) Section 32.46 (securing execution of document by deception);
- (12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);
- (13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;
- (14) Section 49.07 (intoxication assault); ~~[or]~~
- (15) Section 49.08 (intoxication manslaughter); or
- (16) Section 21.02 (continuous sexual abuse of young child or children).

SECTION 2.04. Section 125.0015(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

- (1) discharge of a firearm in a public place as prohibited by the Penal Code;
- (2) reckless discharge of a firearm as prohibited by the Penal Code;
- (3) engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;
- (4) delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health and Safety Code;
- (5) gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;
- (6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal

Code;

(7) compelling prostitution as prohibited by the Penal

Code;

(8) commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;

(9) aggravated assault as described by Section 22.02, Penal Code;

(10) sexual assault as described by Section 22.011, Penal Code;

(11) aggravated sexual assault as described by Section 22.021, Penal Code;

(12) robbery as described by Section 29.02, Penal Code;

(13) aggravated robbery as described by Section 29.03, Penal Code;

(14) unlawfully carrying a weapon as described by Section 46.02, Penal Code;

(15) murder as described by Section 19.02, Penal Code;
[~~or~~]

(16) capital murder as described by Section 19.03, Penal Code; or

(17) continuous sexual abuse of young child or children as described by Section 21.02, Penal Code.

SECTION 2.05. Article 7A.01(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person who is the victim of an offense under Section 21.02, 22.011, or 22.021, Penal Code, or a prosecuting attorney acting on behalf of the person, may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender.

SECTION 2.06. Section 5(a), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(a) If a subsequent application for a writ of habeas corpus is filed after filing an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific

facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application;

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt; or

(3) by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial under Article 37.071, ~~or~~ 37.0711, or 37.072.

SECTION 2.07. Article 15.051(a), Code of Criminal Procedure, is amended to read as follows:

(a) A peace officer or an attorney representing the state may not require a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code.

SECTION 2.08. Article 17.03(b), Code of Criminal Procedure, is amended to read as follows:

(b) Only the court before whom the case is pending may release on personal bond a defendant who:

(1) is charged with an offense under the following sections of the Penal Code:

(A) Section 19.03 (Capital Murder);

(B) Section 20.04 (Aggravated Kidnapping);

(C) Section 22.021 (Aggravated Sexual Assault);

(D) Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);

(E) Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);

(F) Section 29.03 (Aggravated Robbery);

(G) Section 30.02 (Burglary); ~~or~~

(H) Section 71.02 (Engaging in Organized Criminal Activity); or

(I) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(2) is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony; or

(3) does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

SECTION 2.09. Article 17.032(a), Code of Criminal Procedure, is amended to read as follows:

(a) In this article, "violent offense" means an offense under the following sections of the Penal Code:

- (1) Section 19.02 (murder);
- (2) Section 19.03 (capital murder);
- (3) Section 20.03 (kidnapping);
- (4) Section 20.04 (aggravated kidnapping);
- (5) Section 21.11 (indecent with a child);
- (6) Section 22.01(a)(1) (assault);
- (7) Section 22.011 (sexual assault);
- (8) Section 22.02 (aggravated assault);
- (9) Section 22.021 (aggravated sexual assault);
- (10) Section 22.04 (injury to a child, elderly individual, or disabled individual); ~~[or]~~
- (11) Section 29.03 (aggravated robbery); or
- (12) Section 21.02 (continuous sexual abuse of young child or children).

SECTION 2.10. Article 17.091, Code of Criminal Procedure, is amended to read as follows:

Art. 17.091. NOTICE OF CERTAIN BAIL REDUCTIONS REQUIRED. Before a judge or magistrate reduces the amount of bail set for a defendant charged with an offense listed in Section 3g,

Article 42.12, or an offense described by Article 62.001(5) [~~62.01(5)~~], the judge or magistrate shall provide:

(1) to the attorney representing the state, reasonable notice of the proposed bail reduction; and

(2) on request of the attorney representing the state or the defendant or the defendant's counsel, an opportunity for a hearing concerning the proposed bail reduction.

SECTION 2.11. Article 18.021(a), Code of Criminal Procedure, is amended to read as follows:

(a) A search warrant may be issued to search for and photograph a child who is alleged to be the victim of the offenses of injury to a child as prohibited [~~defined~~] by Section 22.04, Penal Code [~~, as amended~~]; sexual assault of a child as prohibited [~~defined~~] by Section 22.011(a), Penal Code [~~, as amended~~]; [~~or~~] aggravated sexual assault of a child as prohibited [~~defined~~] by Section 22.021, Penal Code; or continuous sexual abuse of young child or children as prohibited by Section 21.02, Penal Code.

SECTION 2.12. Article 21.31(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person who is indicted for or who waives indictment for an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code, shall, at the direction of the court, undergo a medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on the request of the victim of the alleged offense. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. The court may require a defendant previously required under this article to undergo a medical procedure or test on indictment for an offense to undergo a subsequent medical procedure or test following conviction of the offense. The person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall be required to make the notification of the

test result to the victim of the alleged offense and to the defendant.

SECTION 2.13. Section 3, Article 31.08, Code of Criminal Procedure, is amended to read as follows:

Sec. 3. Except for the review of a death sentence under Section 2(h), Article 37.071, or under Section 2(h), Article 37.072 [~~37.071(h) of this code~~], an appeal taken in a cause returned to the original county under this article must be docketed in the appellate district in which the county of original venue is located.

SECTION 2.14. Section 2(b), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(b) Except as provided by [~~in~~] Article 37.071 or 37.072, if a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend community supervision and the defendant filed his sworn motion for community supervision before the trial began, and (2) in other cases where the defendant so elects in writing before the commencement of the voir dire examination of the jury panel, the punishment shall be assessed by the same jury, except as provided in Section 3(c) of this article and in Article 44.29. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

SECTION 2.15. Section 4, Article 37.07, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is listed in Section 3g(a)(1), Article 42.12, of this code or if the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, unless the defendant has been convicted of an offense under Section 21.02, Penal Code, or a capital felony, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served equals one-half of the sentence imposed or 30 years, whichever is less, without consideration of any good conduct time he may earn. If the defendant is sentenced to a term of less than four years, he must serve at least two years before he is eligible for parole. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(b) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the first degree, if a prior conviction has been alleged for enhancement of punishment as provided by Section 12.42(b), (c), or (d), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is

longer than 60 years, unless the offense of which the jury has found the defendant guilty is an offense under Section 21.02, Penal Code, or is listed in Section 3g(a)(1), Article 42.12, of this code or the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served plus any good conduct time earned equals one-fourth of the sentence imposed or 15 years, whichever is less. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(e) In the penalty phase of the trial of an offense under Section 21.02, Penal Code, other than an offense punishable under Subsection (i) of that section, in which the punishment is to be assessed by the jury rather than the court, if the jury finds the

defendant guilty, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, it is possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, the defendant will not become eligible for parole until the actual time served equals 25 years, without consideration of any good conduct time. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law might be applied to this defendant, because the application of that law will depend on decisions made by parole authorities.

"You may consider the existence of the parole law. However, you are not to consider the manner in which the parole law may be applied to this particular defendant."

SECTION 2.16. Section 1, Article 38.071, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. This article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by any of the following sections of the Penal Code:

- (1) Section 19.02 (Murder);
- (2) Section 19.03 (Capital Murder);
- (3) Section 19.04 (Manslaughter);
- (4) Section 20.04 (Aggravated Kidnapping);
- (5) Section 21.11 (Indecency with a Child);
- (6) Section 22.011 (Sexual Assault);
- (7) Section 22.02 (Aggravated Assault);
- (8) Section 22.021 (Aggravated Sexual Assault);
- (9) Section 22.04(e) (Injury to a Child, Elderly Individual, or Disabled Individual);
- (10) Section 22.04(f) (Injury to a Child, Elderly Individual, or Disabled Individual), if the conduct is committed intentionally or knowingly;
- (11) Section 25.02 (Prohibited Sexual Conduct);

(12) Section 29.03 (Aggravated Robbery); [~~or~~]

(13) Section 43.25 (Sexual Performance by a Child); or

(14) Section 21.02 (Continuous Sexual Abuse of Young Child or Children).

SECTION 2.17. Article 42.017, Code of Criminal Procedure, is amended to read as follows:

Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or 43.25, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that:

(1) at the time of the offense, the defendant was younger than 19 years of age and the victim was at least 13 years of age; and

(2) the conviction is based solely on the ages of the defendant and the victim or intended victim at the time of the offense.

SECTION 2.18. Section 5(d), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(d) In all other cases the judge may grant deferred adjudication unless:

(1) the defendant is charged with an offense:

(A) under Section 21.02, Penal Code;

(B) under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(C) [~~(B)~~] for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections; or

(2) the defendant:

(A) is charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a felony described by Section 13B(b) of this article; and

(B) has previously been placed on community supervision for any offense under Paragraph (A) of this subdivision.

SECTION 2.19. Article 44.251, Code of Criminal Procedure, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the [~~institutional division of the~~] Texas Department of Criminal Justice for life without parole if the court finds that there is legally insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 2(b), Article 37.071, or Section 2(b), Article 37.072.

(c) If the court of criminal appeals finds reversible error that affects the punishment stage of the trial only, as described by Subsection (b) of this article, and the prosecuting attorney does not file a motion for reformation of sentence in the period described by that subsection, the defendant shall receive a new sentencing trial in the manner required by Article 44.29(c) or (d), as applicable [~~of this code~~].

(d) The court of criminal appeals shall reform a sentence of death imposed under Section 21.02(i), Penal Code, to a sentence of imprisonment in the Texas Department of Criminal Justice for life without parole if the United States Supreme Court finds that the imposition of the death penalty under Section 21.02(i), Penal Code, violates the United States Constitution and issues an order that is not inconsistent with this article.

SECTION 2.20. Article 44.29, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) If any court sets aside or invalidates the sentence of a defendant convicted of an offense punishable as a capital felony under Section 21.02(i), Penal Code, and sentenced to death on the basis of any error affecting punishment only, the court shall not set the conviction aside but rather shall commence a new punishment hearing under Article 37.072, as if a finding of guilt had been returned. The court shall empanel a jury for the sentencing stage of the trial in the same manner as a jury is to be empaneled by the court in other trials before the court for the offense of which the defendant was convicted. At the new punishment hearing, the court shall permit both the state and the defendant to introduce evidence

as permitted by Article 37.072.

SECTION 2.21. Article 56.01, Code of Criminal Procedure, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Sexual assault" includes an offense under Section 21.02, Penal Code.

SECTION 2.22. Article 56.02(a), Code of Criminal Procedure, is amended to read as follows:

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding

compensation to victims of crime as provided by Subchapter B, including information related to the costs that may be compensated under that subchapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the parole of any defendant convicted of any crime subject to this subchapter, and to be notified, if requested, of the defendant's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;

(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under

Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(12) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice;

(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the Board of Pardons and Paroles before an inmate is released on parole; and

(14) except as provided by Article 56.06(a), for a victim of a sexual assault, the right to a forensic medical examination if the sexual assault is reported to a law enforcement agency within 96 hours of the assault.

SECTION 2.23. (a) Article 62.001(5), Code of Criminal Procedure, as renumbered from former Article 62.01(5), Code of Criminal Procedure, and amended by Chapter 1008, Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to conform to an amendment to former Article 62.01(5) by Chapter 1273, Acts of the 79th Legislature, Regular Session, 2005, and is further amended to read as follows:

(5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) a violation of Section 20.04(a)(4)

(Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), or (E);

(H) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), [~~or~~] (G), or (J), but not if the violation results in a deferred adjudication; [~~or~~]

(I) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication; or

(J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code.

(b) Section 2, Chapter 1273, Acts of the 79th Legislature, Regular Session, 2005, is repealed.

SECTION 2.24. Article 62.001(6), Code of Criminal Procedure, is amended to read as follows:

(6) "Sexually violent offense" means any of the following offenses committed by a person 17 years of age or older:

(A) an offense under Section 21.02 (Continuous sexual abuse of young child or children), 21.11(a)(1) (Indecency with a child), 22.011 (Sexual assault), or 22.021 (Aggravated sexual assault), Penal Code;

(B) an offense under Section 43.25 (Sexual performance by a child), Penal Code;

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

(D) an offense under Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C) of Subdivision (5);
or

(E) an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), or (D).

SECTION 2.25. Article 102.0186(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person convicted of an offense under Section 21.02, 21.11, 22.011(a)(2), 22.021(a)(1)(B), 43.25, 43.251, or 43.26, Penal Code, shall pay \$100 on conviction of the offense.

SECTION 2.26. Section 25.0341(a), Education Code, as added by Chapter 997, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

(a) This section applies only to:

(1) a student:

(A) who has been convicted of continuous sexual abuse of young child or children under Section 21.02, Penal Code, or

convicted of or placed on deferred adjudication for the offense of sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code, committed against another student who, at the time the offense occurred, was assigned to the same campus as the student convicted or placed on deferred adjudication;

(B) who has been adjudicated under Section 54.03, Family Code, as having engaged in conduct described by Paragraph (A);

(C) whose prosecution under Section 53.03, Family Code, for engaging in conduct described by Paragraph (A) has been deferred; or

(D) who has been placed on probation under Section 54.04(d)(1), Family Code, for engaging in conduct described by Paragraph (A); and

(2) a student who is the victim of conduct described by Subdivision (1)(A).

SECTION 2.27. Section 37.007(a), Education Code, is amended to read as follows:

(a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code;

(E) aggravated kidnapping under Section 20.04, Penal Code;

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

(G) manslaughter under Section 19.04, Penal Code; ~~[or]~~

(H) criminally negligent homicide under Section 19.05, Penal Code; or

(I) continuous sexual abuse of young child or children under Section 21.02, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

SECTION 2.28. Section 33.009, Family Code, is amended to read as follows:

Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A court or the guardian ad litem or attorney ad litem for the minor shall report conduct reasonably believed to violate Section 21.02, 22.011, 22.021, or 25.02, Penal Code, based on information obtained during a confidential court proceeding held under this chapter to:

(1) any local or state law enforcement agency;

(2) the Department of Family and Protective ~~[and Regulatory]~~ Services, if the alleged conduct involves a person responsible for the care, custody, or welfare of the child;

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged conduct occurred, if the alleged conduct occurred in a facility operated, licensed, certified, or registered by a state agency; or

(4) an appropriate agency designated by the court.

SECTION 2.29. Section 33.010, Family Code, is amended to read as follows:

Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other

law, information obtained by the Department of Family and Protective [and Regulatory] Services or another entity under Section 33.008 or 33.009 is confidential except to the extent necessary to prove a violation of Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

SECTION 2.30. Section 156.104, Family Code, is amended to read as follows:

Sec. 156.104. MODIFICATION OF ORDER ON CONVICTION FOR CHILD ABUSE; PENALTY. (a) Except as provided by Section 156.1045, the conviction of a conservator for an offense under Section 21.02, Penal Code, or the conviction of a conservator[7] or an order deferring adjudication with regard to the conservator[7] for an offense involving the abuse of a child under Section 21.11, 22.011, or 22.021, Penal Code, is a material and substantial change of circumstances sufficient to justify a temporary order and modification of an existing court order or portion of a decree that provides for the appointment of a conservator or that sets the terms and conditions of conservatorship or for the possession of or access to a child.

(b) A person commits an offense if the person files a suit to modify an order or portion of a decree based on the grounds permitted under Subsection (a) and the person knows that the person against whom the motion is filed has not been convicted of an offense under Section 21.02, Penal Code, or convicted of, or received deferred adjudication for an offense, under Section 21.11, 22.011, or 22.021, Penal Code. An offense under this subsection is a Class B misdemeanor.

SECTION 2.31. Section 161.001, Family Code, is amended to read as follows:

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP. 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;

(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 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);
(ii) Section 19.03 (capital murder);
(iii) Section 19.04 (manslaughter);
(iv) Section 21.11 (indecent 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 child);

(xi) Section 25.02 (prohibited sexual conduct);

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

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

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

(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 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 or an authorized

agency for not less than six months, and:

(i) the department or authorized agency 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:

(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, as defined by Section 261.001;

(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; or

(T) been convicted of 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; and

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

SECTION 2.32. Section 161.007, Family Code, is amended to read as follows:

Sec. 161.007. TERMINATION WHEN PREGNANCY RESULTS FROM CRIMINAL ACT. The court may order the termination of the parent-child relationship of a parent and a child if the court finds that:

(1) the parent has been convicted of an offense committed under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;

(2) as a direct result of the commission of the offense by the parent, the victim of the offense became pregnant with the parent's child; and

(3) termination is in the best interest of the child.

SECTION 2.33. Section 261.001(1), Family Code, is amended to read as follows:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code; or

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code.

SECTION 2.34. 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 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 that would constitute an offense under the following provisions of the Penal Code:

- (A) Section 19.02 (murder);
- (B) Section 19.03 (capital murder);
- (C) Section 19.04 (manslaughter);
- (D) Section 21.11 (indecent 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 child);
- (J) Section 25.02 (prohibited sexual conduct);
- (K) Section 43.25 (sexual performance by a child); ~~[or]~~
- (L) Section 43.26 (possession or promotion of child pornography); or
- (M) Section 21.02 (continuous sexual abuse of young child or children);

(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's parental rights with regard to another child have been involuntarily terminated based on a finding that the parent's conduct violated Section 161.001(1)(D) or (E) or a substantially equivalent provision of another state's law;

(6) 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 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 Subdivision (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

(7) the parent's parental rights with regard to two other children have been involuntarily terminated.

SECTION 2.35. Section 411.1471(a), Government Code, is amended to read as follows:

(a) This section applies to a defendant who is:

(1) indicted or waives indictment for a felony prohibited or punishable under any of the following Penal Code sections:

(A) Section 20.04(a)(4);

(B) Section 21.11;

(C) Section 22.011;

(D) Section 22.021;

(E) Section 25.02;

(F) Section 30.02(d);

(G) Section 43.05;

(H) Section 43.25; ~~[ex]~~

(I) Section 43.26; or

(J) Section 21.02;

(2) arrested for a felony described by Subdivision (1) after having been previously convicted of or placed on deferred adjudication for an offense described by Subdivision (1) or an offense punishable under Section 30.02(c)(2), Penal Code; or

(3) convicted of an offense under Section 21.07 or 21.08, Penal Code.

SECTION 2.36. Section 420.003(4), Government Code, is amended to read as follows:

(4) "Sexual assault" means any act or attempted act as described by Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code.

SECTION 2.37. Section 499.027(b), Government Code, is

amended to read as follows:

(b) An inmate is not eligible under this subchapter to be considered for release to intensive supervision parole if:

(1) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure;

(2) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense listed in 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 20.03 (kidnapping);
- (E) Section 20.04 (aggravated kidnapping);
- (F) Section 21.11 (indecent with a child);
- (G) Section 22.011 (sexual assault);
- (H) Section 22.02 (aggravated assault);
- (I) Section 22.021 (aggravated sexual assault);
- (J) Section 22.04 (injury to a child or an elderly individual);
- (K) Section 25.02 (prohibited sexual conduct);
- (L) Section 25.08 (sale or purchase of a child);
- (M) Section 28.02 (arson);
- (N) Section 29.02 (robbery);
- (O) Section 29.03 (aggravated robbery);
- (P) Section 30.02 (burglary), if the offense is punished as a first-degree felony under that section;
- (Q) Section 43.04 (aggravated promotion of prostitution);
- (R) Section 43.05 (compelling prostitution);
- (S) Section 43.24 (sale, distribution, or display of harmful material to minor);
- (T) Section 43.25 (sexual performance by a child);
- (U) Section 46.10 (deadly weapon in penal institution);

(V) Section 15.01 (criminal attempt), if the offense attempted is listed in this subsection;

(W) Section 15.02 (criminal conspiracy), if the offense that is the subject of the conspiracy is listed in this subsection; ~~[or]~~

(X) Section 15.03 (criminal solicitation), if the offense solicited is listed in this subsection; or

(Y) Section 21.02 (continuous sexual abuse of young child or children); or

(3) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense under Chapter 481, Health and Safety Code, punishable by a minimum term of imprisonment or a maximum fine that is greater than the minimum term of imprisonment or the maximum fine for a first degree felony.

SECTION 2.38. Section 501.061(a), Government Code, is amended to read as follows:

(a) A physician employed or retained by the department may perform an orchiectomy on an inmate only if:

(1) the inmate has been convicted of an offense under Section 21.02, 21.11, 22.011(a)(2), or 22.021(a)(2)(B), Penal Code, and has previously been convicted under one or more of those sections;

(2) the inmate is 21 years of age or older;

(3) the inmate requests the procedure in writing;

(4) the inmate signs a statement admitting the inmate committed the offense described by Subsection (a)(1) for which the inmate has been convicted;

(5) a psychiatrist and a psychologist who are appointed by the department and have experience in the treatment of sex offenders:

(A) evaluate the inmate and determine that the inmate is a suitable candidate for the procedure; and

(B) counsel the inmate before the inmate undergoes the procedure;

(6) the physician obtains the inmate's informed, written consent to undergo the procedure;

(7) the inmate has not previously requested that the

department perform the procedure and subsequently withdrawn the request; and

(8) the inmate consults with a monitor as provided by Subsection (f).

SECTION 2.39. Section 508.046, Government Code, is amended to read as follows:

Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on parole an inmate who was convicted of an offense under Section 21.02, 21.11(a)(1), or 22.021, Penal Code, or who is required under Section 508.145(c) to serve 35 calendar years before becoming eligible for release on parole, all members of the board must vote on the release on parole of the inmate, and at least two-thirds of the members must vote in favor of the release on parole. A member of the board may not vote on the release unless the member first receives a copy of a written report from the department on the probability that the inmate would commit an offense after being released on parole.

SECTION 2.40. Section 508.117(g), Government Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Sexual assault" includes an offense under Section 21.02, Penal Code.

SECTION 2.41. Section 508.151(a), Government Code, is amended to read as follows:

(a) For the purpose of diverting inmates to halfway houses under Section 508.118, a parole panel, after reviewing all available pertinent information, may designate a presumptive parole date for an inmate who:

(1) has never been convicted of an offense listed under Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, or an offense under Section 21.02, Penal Code; and

(2) has never had a conviction with a judgment that contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

SECTION 2.42. Section 508.187(a), Government Code, is amended to read as follows:

(a) This section applies only to a releasee serving a sentence for an offense under:

(1) Section 43.25 or 43.26, Penal Code;

(2) Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(3) Section 20.04(a)(4), Penal Code, if the releasee committed the offense with the intent to violate or abuse the victim sexually; or

(4) Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the releasee committed the offense with the intent to commit a felony listed in Subdivision (2) or (3).

SECTION 2.43. Section 508.189(a), Government Code, is amended to read as follows:

(a) A parole panel shall require as a condition of parole or mandatory supervision that a releasee convicted of an offense under Section 21.02, 21.08, 21.11, 22.011, 22.021, 25.02, 43.25, or 43.26, Penal Code, pay to the division a parole supervision fee of \$5 each month during the period of parole supervision.

SECTION 2.44. Section 242.126(c), Health and Safety Code, is amended to read as follows:

(c) The agency shall begin the investigation:

(1) within 24 hours of receipt of the report or other allegation, if the report of abuse or neglect or other complaint alleges that:

(A) a resident's health or safety is in imminent danger;

(B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;

(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;

(D) a resident has been a victim of any act or attempted act described by Section 21.02, 21.11, 22.011, or 22.021, Penal Code; or

(E) a resident has suffered bodily injury, as that term is defined by Section 1.07, Penal Code, because of conduct alleged in the report of abuse or neglect or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident's health or safety in imminent danger.

SECTION 2.45. Section 250.006(a), Health and Safety Code, is amended to read as follows:

(a) A person for whom the facility is entitled to obtain criminal history record information may not be employed in a facility 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 and unlawful restraint);

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

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

(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 a 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); or

(14) 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 under Subdivisions (1)-(13).

SECTION 2.46. Section 841.002(8), Health and Safety Code, is amended to read as follows:

(8) "Sexually violent offense" means:

(A) an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

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

(C) an offense under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the person committed the offense with the intent to commit an offense listed in Paragraph (A) or (B);

(D) an offense under Section 19.02 or 19.03, Penal Code, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during a civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), or (D);

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E); or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E).

SECTION 2.47. 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, 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 children 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 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 under Section 25.07, Penal Code, punished as a felony;

(11) an offense under Section 25.071, Penal Code, punished as a felony;

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

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

(14) robbery under Section 29.02, Penal Code;

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

(16) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(17) 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 2.48. Section 3.03(b), Penal Code, is amended to read as follows:

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense:

(A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(2) an offense:

(A) under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section; or

(3) an offense:

(A) under Section 21.15 or 43.26, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections.

SECTION 2.49. Section 12.35(c), Penal Code, is amended to read as follows:

(c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:

(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or

(2) the individual has previously been finally convicted of any felony:

(A) under Section 21.02 or listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

SECTION 2.50. Section 15.031(b), Penal Code, is amended to read as follows:

(b) A person commits an offense if, with intent that an offense under Section 21.02, 21.11, 22.011, 22.021, or 43.25 be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

SECTION 2.51. Section 19.03(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person commits murder

as defined under Section 19.02(b)(1) and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, continuous sexual abuse of young child or children, aggravated sexual assault, arson, obstruction or retaliation, or terroristic threat under Section 22.07(a)(1), (3), (4), (5), or (6);

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution;

(5) the person, while incarcerated in a penal institution, murders another:

(A) who is employed in the operation of the penal institution; or

(B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(6) the person:

(A) while incarcerated for an offense under this section or Section 19.02, murders another; or

(B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another;

(7) the person murders more than one person:

(A) during the same criminal transaction; or

(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct;

(8) the person murders an individual under six years of age; or

(9) the person murders another person in retaliation for or on account of the service or status of the other person as a judge or justice of the supreme court, the court of criminal

appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.

SECTION 2.52. Section 38.17(a), Penal Code, is amended to read as follows:

(a) A person, other than a person who has a relationship with a child described by Section 22.04(b), commits an offense if:

(1) the actor observes the commission or attempted commission of an offense prohibited by Section 21.02 or 22.021(a)(2)(B) under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against the child;

(2) the actor fails to assist the child or immediately report the commission of the offense to a peace officer or law enforcement agency; and

(3) the actor could assist the child or immediately report the commission of the offense without placing the actor in danger of suffering serious bodily injury or death.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. (a) Except as provided by Subsections (b) and (c) of this section, the change in law made by this Act applies only to an offense committed on or after September 1, 2007. An offense committed before September 1, 2007, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense was committed before September 1, 2007, if any element of the offense occurred before that date.

(b) The change in law made by this Act to Section 841.002, Health and Safety Code, applies only to an individual who on or after September 1, 2007, is serving a sentence in the Texas Department of Criminal Justice or is committed to the Department of State Health Services for an offense committed before, on, or after the effective date of this Act.

(c) The change in law made by this Act to Article 12.01, Code of Criminal Procedure, 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 3.02. This Act takes effect September 1, 2007.