

1-1 By: Riddle, et al. (Senate Sponsor - Deuell) H.B. No. 8
1-2 (In the Senate - Received from the House March 7, 2007;
1-3 March 7, 2007, read first time and referred to Committee on
1-4 Criminal Justice; March 19, 2007, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 1, 1 present not voting; March 19, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 8 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the prosecution, punishment, and supervision of certain
1-11 sex offenders and to certain crimes involving sex offenders.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. This Act shall be known as the Jessica Lunsford
1-14 Act.

1-15 SECTION 2. Article 12.01, Code of Criminal Procedure, is
1-16 amended to read as follows:

1-17 Art. 12.01. FELONIES. Except as provided in Article 12.03,
1-18 felony indictments may be presented within these limits, and not
1-19 afterward:

1-20 (1) no limitation:

1-21 (A) murder and manslaughter;

1-22 (B) sexual assault under Section 22.011(a)(2),
1-23 Penal Code, or aggravated sexual assault under Section
1-24 22.021(a)(1)(B), Penal Code;

1-25 (C) sexual assault, if during the investigation
1-26 of the offense biological matter is collected and subjected to
1-27 forensic DNA testing and the testing results show that the matter
1-28 does not match the victim or any other person whose identity is
1-29 readily ascertained;

1-30 (D) indecenty with a child under Section
1-31 21.11(a), Penal Code; or

1-32 (E) [~~(C)~~] an offense involving leaving the scene
1-33 of an accident under Section 550.021, Transportation Code, if the
1-34 accident resulted in the death of a person;

1-35 (2) ten years from the date of the commission of the
1-36 offense:

1-37 (A) theft of any estate, real, personal or mixed,
1-38 by an executor, administrator, guardian or trustee, with intent to
1-39 defraud any creditor, heir, legatee, ward, distributee,
1-40 beneficiary or settlor of a trust interested in such estate;

1-41 (B) theft by a public servant of government
1-42 property over which he exercises control in his official capacity;

1-43 (C) forgery or the uttering, using or passing of
1-44 forged instruments;

1-45 (D) injury to a child, elderly individual, or
1-46 disabled individual punishable as a felony of the first degree
1-47 under Section 22.04, Penal Code;

1-48 (E) sexual assault, except as provided by
1-49 Subdivision (1) or (5); or

1-50 (F) arson;

1-51 (3) seven years from the date of the commission of the
1-52 offense:

1-53 (A) misapplication of fiduciary property or
1-54 property of a financial institution;

1-55 (B) securing execution of document by deception;
1-56 or

1-57 (C) a violation under Sections 162.403(22)-(39),
1-58 Tax Code;

1-59 (4) five years from the date of the commission of the
1-60 offense:

1-61 (A) theft or [~~burglary~~] robbery;

1-62 (B) except as provided by Subdivision (5),
1-63 kidnapping or burglary;

2-1 (C) injury to a child, elderly individual, or
 2-2 disabled individual that is not punishable as a felony of the first
 2-3 degree under Section 22.04, Penal Code;

2-4 (D) abandoning or endangering a child; or

2-5 (E) insurance fraud;

2-6 (5) 20 years from the 18th birthday of the victim of
 2-7 one of the following offenses, if the investigation of the offense
 2-8 shows that the victim is younger than 17 years of age at the time the
 2-9 offense is committed:

2-10 (A) sexual performance by a child under Section
 2-11 43.25, Penal Code;

2-12 (B) aggravated kidnapping under Section
 2-13 20.04(a)(4), Penal Code, if the defendant committed the offense
 2-14 with the intent to violate or abuse the victim sexually; or

2-15 (C) burglary under Section 30.02, Penal Code, if
 2-16 the offense is punishable under Subsection (d) of that section and
 2-17 the defendant committed the offense with the intent to commit an
 2-18 offense described by Subdivision (1)(B) or (D) of this article or
 2-19 Paragraph (B) of this subdivision ~~[ten years from the 18th birthday~~
 2-20 ~~of the victim of the offense.~~

2-21 [~~(A) indecency with a child under Section~~
 2-22 ~~21.11(a)(1) or (2), Penal Code; or~~

2-23 [~~(B) except as provided by Subdivision (1),~~
 2-24 ~~sexual assault under Section 22.011(a)(2), Penal Code, or~~
 2-25 ~~aggravated sexual assault under Section 22.021(a)(1)(B), Penal~~
 2-26 ~~Code]; or~~

2-27 (6) three years from the date of the commission of the
 2-28 offense: all other felonies.

2-29 SECTION 3. Section 4, Article 37.07, Code of Criminal
 2-30 Procedure, is amended by amending Subsections (a) and (b) and
 2-31 adding Subsection (e) to read as follows:

2-32 (a) In the penalty phase of the trial of a felony case in
 2-33 which the punishment is to be assessed by the jury rather than the
 2-34 court, if the offense of which the jury has found the defendant
 2-35 guilty is listed in Section 3g(a)(1), Article 42.12, of this code or
 2-36 if the judgment contains an affirmative finding under Section
 2-37 3g(a)(2), Article 42.12, of this code, unless the defendant has
 2-38 been convicted of a capital felony or a sexually violent offense the
 2-39 victim of which is younger than 14 years of age at the time the
 2-40 offense is committed the court shall charge the jury in writing as
 2-41 follows:

2-42 "Under the law applicable in this case, the defendant, if
 2-43 sentenced to a term of imprisonment, may earn time off the period of
 2-44 incarceration imposed through the award of good conduct time.
 2-45 Prison authorities may award good conduct time to a prisoner who
 2-46 exhibits good behavior, diligence in carrying out prison work
 2-47 assignments, and attempts at rehabilitation. If a prisoner engages
 2-48 in misconduct, prison authorities may also take away all or part of
 2-49 any good conduct time earned by the prisoner.

2-50 "It is also possible that the length of time for which the
 2-51 defendant will be imprisoned might be reduced by the award of
 2-52 parole.

2-53 "Under the law applicable in this case, if the defendant is
 2-54 sentenced to a term of imprisonment, he will not become eligible for
 2-55 parole until the actual time served equals one-half of the sentence
 2-56 imposed or 30 years, whichever is less, without consideration of
 2-57 any good conduct time he may earn. If the defendant is sentenced to
 2-58 a term of less than four years, he must serve at least two years
 2-59 before he is eligible for parole. Eligibility for parole does not
 2-60 guarantee that parole will be granted.

2-61 "It cannot accurately be predicted how the parole law and
 2-62 good conduct time might be applied to this defendant if he is
 2-63 sentenced to a term of imprisonment, because the application of
 2-64 these laws will depend on decisions made by prison and parole
 2-65 authorities.

2-66 "You may consider the existence of the parole law and good
 2-67 conduct time. However, you are not to consider the extent to which
 2-68 good conduct time may be awarded to or forfeited by this particular
 2-69 defendant. You are not to consider the manner in which the parole
 2-70 law may be applied to this particular defendant."

3-1 (b) In the penalty phase of the trial of a felony case in
 3-2 which the punishment is to be assessed by the jury rather than the
 3-3 court, if the offense is punishable as a felony of the first degree,
 3-4 if a prior conviction has been alleged for enhancement of
 3-5 punishment as provided by Section 12.42(b), (c)(1) or (2), or (d),
 3-6 Penal Code, or if the offense is a felony not designated as a
 3-7 capital felony or a felony of the first, second, or third degree and
 3-8 the maximum term of imprisonment that may be imposed for the offense
 3-9 is longer than 60 years, unless the offense of which the jury has
 3-10 found the defendant guilty is listed in Section 3g(a)(1), Article
 3-11 42.12, of this code or the judgment contains an affirmative finding
 3-12 under Section 3g(a)(2), Article 42.12, of this code, the court
 3-13 shall charge the jury in writing as follows:

3-14 "Under the law applicable in this case, the defendant, if
 3-15 sentenced to a term of imprisonment, may earn time off the period of
 3-16 incarceration imposed through the award of good conduct time.
 3-17 Prison authorities may award good conduct time to a prisoner who
 3-18 exhibits good behavior, diligence in carrying out prison work
 3-19 assignments, and attempts at rehabilitation. If a prisoner engages
 3-20 in misconduct, prison authorities may also take away all or part of
 3-21 any good conduct time earned by the prisoner.

3-22 "It is also possible that the length of time for which the
 3-23 defendant will be imprisoned might be reduced by the award of
 3-24 parole.

3-25 "Under the law applicable in this case, if the defendant is
 3-26 sentenced to a term of imprisonment, he will not become eligible for
 3-27 parole until the actual time served plus any good conduct time
 3-28 earned equals one-fourth of the sentence imposed or 15 years,
 3-29 whichever is less. Eligibility for parole does not guarantee that
 3-30 parole will be granted.

3-31 "It cannot accurately be predicted how the parole law and
 3-32 good conduct time might be applied to this defendant if he is
 3-33 sentenced to a term of imprisonment, because the application of
 3-34 these laws will depend on decisions made by prison and parole
 3-35 authorities.

3-36 "You may consider the existence of the parole law and good
 3-37 conduct time. However, you are not to consider the extent to which
 3-38 good conduct time may be awarded to or forfeited by this particular
 3-39 defendant. You are not to consider the manner in which the parole
 3-40 law may be applied to this particular defendant."

3-41 (e) In this article, "sexually violent offense" has the
 3-42 meaning assigned by Section 1.07, Penal Code.

3-43 SECTION 4. Section 2, Article 37.071, Code of Criminal
 3-44 Procedure, is amended by amending Subsections (a) through (e) and
 3-45 (g) and adding Subsection (j) to read as follows:

3-46 (a)(1) If a defendant is tried for a capital offense in
 3-47 which the state seeks the death penalty, on a finding that the
 3-48 defendant is guilty of a capital offense, the court shall conduct a
 3-49 separate sentencing proceeding to determine whether the defendant
 3-50 shall be sentenced to death or life imprisonment without parole.
 3-51 The proceeding shall be conducted in the trial court and, except as
 3-52 provided by Article 44.29(c) [~~of this code~~], before the trial jury
 3-53 as soon as practicable. In the proceeding, evidence may be
 3-54 presented by the state and the defendant or the defendant's counsel
 3-55 as to any matter that the court deems relevant to sentence,
 3-56 including evidence of the defendant's background or character or
 3-57 the circumstances of the offense that mitigates against the
 3-58 imposition of the death penalty. This subdivision shall not be
 3-59 construed to authorize the introduction of any evidence secured in
 3-60 violation of the Constitution of the United States or of the State
 3-61 of Texas. The state and the defendant or the defendant's counsel
 3-62 shall be permitted to present argument for or against sentence of
 3-63 death. The introduction of evidence of extraneous conduct is
 3-64 governed by the notice requirements of Section 3(g), Article 37.07.
 3-65 The court, the attorney representing the state, the defendant, or
 3-66 the defendant's counsel may not inform a juror or a prospective
 3-67 juror of the effect of a failure of a jury to agree on issues
 3-68 submitted under Subsection (b), [~~(c) or~~] (e), or (j).

3-69 (2) Notwithstanding Subdivision (1), evidence may not
 3-70 be offered by the state to establish that the race or ethnicity of

4-1 the defendant makes it likely that the defendant will engage in
4-2 future criminal conduct.

4-3 (b) On conclusion of the presentation of the evidence, the
4-4 court shall submit the following issues to the jury:

4-5 (1) whether there is a probability that the defendant
4-6 would commit criminal acts of violence that would constitute a
4-7 continuing threat to society; and

4-8 (2) in cases that are not described by Subsection (j)
4-9 and in which the jury charge at the guilt or innocence stage
4-10 permitted the jury to find the defendant guilty as a party under
4-11 Sections 7.01 and 7.02, Penal Code, whether the defendant actually
4-12 caused the death of the deceased or did not actually cause the death
4-13 of the deceased but intended to kill the deceased or another or
4-14 anticipated that a human life would be taken.

4-15 (c) The state, as applicable, must prove each issue
4-16 submitted under Subsection (b) or under Subsections (b)(1) and (j)
4-17 [of this article] beyond a reasonable doubt, and the jury shall
4-18 return a special verdict of "yes" or "no" on each issue submitted
4-19 under Subsection (b) or submitted under Subsections (b)(1) and (j)
4-20 [of this Article].

4-21 (d) The court, as applicable, shall charge the jury that:

4-22 (1) in deliberating on the issues submitted under
4-23 Subsection (b) or in deliberating the issues submitted under
4-24 Subsections (b)(1) and (j) [of this article], it shall consider all
4-25 evidence admitted at the guilt or innocence stage and the
4-26 punishment stage, including evidence of the defendant's background
4-27 or character or the circumstances of the offense that militates for
4-28 or mitigates against the imposition of the death penalty;

4-29 (2) it may not answer any issue submitted under
4-30 Subsection (b) or Subsections (b)(1) and (j) [of this article]
4-31 "yes" unless it agrees unanimously and it may not answer any issue
4-32 "no" unless 10 or more jurors agree; and

4-33 (3) members of the jury need not agree on what
4-34 particular evidence supports a negative answer to any issue
4-35 submitted under Subsection (b) or Subsections (b)(1) and (j) [of
4-36 this article].

4-37 (e)(1) The court shall instruct the jury that if the jury
4-38 returns an affirmative finding to each issue submitted under
4-39 Subsection (b) or, as applicable, Subsections (b)(1) and (j), it
4-40 shall answer the following issue:

4-41 Whether, taking into consideration all of the evidence,
4-42 including the circumstances of the offense, the defendant's
4-43 character and background, and the personal moral culpability of the
4-44 defendant, there is a sufficient mitigating circumstance or
4-45 circumstances to warrant that a sentence of life imprisonment
4-46 without parole rather than a death sentence be imposed.

4-47 (2) The court shall:

4-48 (A) instruct the jury that if the jury answers
4-49 that a circumstance or circumstances warrant that a sentence of
4-50 life imprisonment without parole rather than a death sentence be
4-51 imposed, the court will sentence the defendant to imprisonment in
4-52 the institutional division of the Texas Department of Criminal
4-53 Justice for life without parole; and

4-54 (B) charge the jury that a defendant sentenced to
4-55 confinement for life without parole under this article is
4-56 ineligible for release from the department on parole.

4-57 (g) If the jury returns an affirmative finding on each issue
4-58 submitted under Subsection (b) or, as applicable, under Subsections
4-59 (b)(1) and (j), and a negative finding on an issue submitted under
4-60 Subsection (e)(1), the court shall sentence the defendant to death.
4-61 If the jury returns a negative finding on any issue submitted under
4-62 Subsection (b) or, as applicable, under Subsections (b)(1) and (j)
4-63 or an affirmative finding on an issue submitted under Subsection
4-64 (e)(1) or is unable to answer any issue submitted under Subsection
4-65 (b) or Subsections (b)(1) and (j) or Subsection (e), the court shall
4-66 sentence the defendant to confinement in the institutional division
4-67 of the Texas Department of Criminal Justice for life imprisonment
4-68 without parole.

4-69 (j) In a case punishable as a capital felony under Section
4-70 12.42(c)(3), Penal Code, and in which the jury charge at the guilt

5-1 or innocence stage permitted the jury to find the defendant guilty
 5-2 as a party under Sections 7.01 and 7.02, Penal Code, on conclusion
 5-3 of the presentation of the evidence and in addition to the issue
 5-4 described by Subsection (b)(1), the court shall submit to the jury
 5-5 the issue of whether the defendant actually engaged in the conduct
 5-6 prohibited by the offense of which the defendant was found guilty or
 5-7 did not actually engage in the conduct prohibited by that offense
 5-8 but intended that the offense be committed against the victim or
 5-9 another intended victim.

5-10 SECTION 5. Article 44.251(a), Code of Criminal Procedure,
 5-11 is amended to read as follows:

5-12 (a) The court of criminal appeals shall reform a sentence of
 5-13 death to a sentence of confinement in the [~~institutional division~~
 5-14 ~~of the~~] Texas Department of Criminal Justice for life without
 5-15 parole if the court finds that there is legally insufficient
 5-16 evidence to support an affirmative answer to an issue submitted to
 5-17 the jury under Section 2(b) or, if applicable, under Sections
 5-18 2(b)(1) and (j), Article 37.071.

5-19 SECTION 6. Subchapter C, Chapter 499, Government Code, is
 5-20 amended by adding Section 499.054 to read as follows:

5-21 Sec. 499.054. SEX OFFENDER TREATMENT PROGRAM. (a) In this
 5-22 section, "sex offender treatment program" means a comprehensive
 5-23 treatment program that:

5-24 (1) psychologically evaluates inmates who are serving
 5-25 a sentence for an offense described by Section 12.42(c)(2), Penal
 5-26 Code;

5-27 (2) addresses the motivation and psychosocial
 5-28 education of inmates described by Subdivision (1); and

5-29 (3) provides relapse prevention training for inmates
 5-30 described by Subdivision (1), including interruption of cognitive
 5-31 and behavioral patterns that have led the inmate to commit criminal
 5-32 offenses.

5-33 (b) The department shall establish a sex offender treatment
 5-34 program to treat inmates who are serving a sentence for an offense
 5-35 punishable under Section 12.50 or 12.42(c)(2), Penal Code, and who
 5-36 are not eligible for release on parole. The department shall
 5-37 require an inmate described by this subsection to participate in
 5-38 and complete the sex offender treatment program before being
 5-39 released from the department.

5-40 (c) The department may establish a sex offender treatment
 5-41 program to treat inmates other than those inmates described by
 5-42 Subsection (b).

5-43 SECTION 7. Section 508.145, Government Code, is amended by
 5-44 amending Subsections (a), (c), and (d) and adding Subsection (b) to
 5-45 read as follows:

5-46 (a) An inmate under sentence of death, [~~or~~] serving a
 5-47 sentence of life imprisonment without parole, or serving a sentence
 5-48 for an offense for which punishment is increased under Section
 5-49 12.50, Penal Code, is not eligible for release on parole.

5-50 (b) Notwithstanding Subsection (c) or (d), an inmate is not
 5-51 eligible for release on parole if the inmate is serving a sentence:

5-52 (1) for an offense for which punishment is increased
 5-53 under Section 12.42(c)(2), Penal Code, and the victim of which is
 5-54 younger than 14 years of age at the time the offense is committed;
 5-55 or

5-56 (2) for an offense described by Section 3g(a)(1)(D) or
 5-57 (E), Article 42.12, Code of Criminal Procedure, the victim of which
 5-58 is younger than 14 years of age at the time the offense is
 5-59 committed.

5-60 (c) Subject to Subsection (b), an [An] inmate serving a
 5-61 sentence under Section 12.42(c)(2), Penal Code, is not eligible for
 5-62 release on parole until the actual calendar time the inmate has
 5-63 served, without consideration of good conduct time, equals 35
 5-64 calendar years.

5-65 (d) Subject to Subsection (b), an [An] inmate serving a
 5-66 sentence for an offense described by Section 3g(a)(1)(A), (C), (D),
 5-67 (E), (F), (G), or (H), Article 42.12, Code of Criminal Procedure, or
 5-68 for an offense for which the judgment contains an affirmative
 5-69 finding under Section 3g(a)(2) of that article, is not eligible for
 5-70 release on parole until the inmate's actual calendar time served,

6-1 without consideration of good conduct time, equals one-half of the
6-2 sentence or 30 calendar years, whichever is less, but in no event is
6-3 the inmate eligible for release on parole in less than two calendar
6-4 years.

6-5 SECTION 8. Section 508.149(a), Government Code, is amended
6-6 to read as follows:

6-7 (a) An inmate may not be released to mandatory supervision
6-8 if the inmate is serving a sentence for or has been previously
6-9 convicted of:

6-10 (1) an offense for which the judgment contains an
6-11 affirmative finding under Section 3g(a)(2), Article 42.12, Code of
6-12 Criminal Procedure;

6-13 (2) a first degree felony or a second degree felony
6-14 under Section 19.02, Penal Code;

6-15 (3) a capital felony under Section 19.03, Penal Code;

6-16 (4) a first degree felony or a second degree felony
6-17 under Section 20.04, Penal Code;

6-18 (5) an offense [a second degree felony or a third
6-19 degree felony] under Section 21.11, Penal Code;

6-20 (6) a [~~second degree~~] felony under Section 22.011,
6-21 Penal Code;

6-22 (7) a first degree felony or a second degree felony
6-23 under Section 22.02, Penal Code;

6-24 (8) a first degree felony under Section 22.021, Penal
6-25 Code;

6-26 (9) a first degree felony under Section 22.04, Penal
6-27 Code;

6-28 (10) a first degree felony under Section 28.02, Penal
6-29 Code;

6-30 (11) a second degree felony under Section 29.02, Penal
6-31 Code;

6-32 (12) a first degree felony under Section 29.03, Penal
6-33 Code;

6-34 (13) a first degree felony under Section 30.02, Penal
6-35 Code; [~~or~~]

6-36 (14) a felony for which the punishment is increased
6-37 under Section 481.134 or Section 481.140, Health and Safety Code;
6-38 or

6-39 (15) a first degree felony under Section 43.25, Penal
6-40 Code.

6-41 SECTION 9. Section 841.082, Health and Safety Code, is
6-42 amended by adding Subsection (b) to read as follows:

6-43 (b) A tracking service to which a person is required to
6-44 submit under Subsection (a)(5) must:

6-45 (1) track the person's location in real time;

6-46 (2) be able to provide a real-time report of the
6-47 person's location to the case manager at the case manager's request;
6-48 and

6-49 (3) periodically provide a cumulative report of the
6-50 person's location to the case manager.

6-51 SECTION 10. Subchapter E, Chapter 841, Health and Safety
6-52 Code, is amended by adding Section 841.084 to read as follows:

6-53 Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding
6-54 Section 841.146(c), a civilly committed person who is not indigent
6-55 is responsible for the cost of the tracking service required by
6-56 Section 841.082 and monthly shall pay to the council the amount that
6-57 the council determines will be necessary to defray the cost of
6-58 operating the service with respect to the person during the
6-59 subsequent month. The council immediately shall transfer the money
6-60 to the appropriate service provider.

6-61 SECTION 11. Section 1.07(a), Penal Code, is amended by
6-62 adding Subdivision (50) to read as follows:

6-63 (50) "Sexually violent offense" means any of the
6-64 following offenses:

6-65 (A) an offense under Section 22.011 (Sexual
6-66 assault) or 22.021 (Aggravated sexual assault);

6-67 (B) an offense under Section 43.25 (Sexual
6-68 performance by a child);

6-69 (C) an offense under Section 20.04(a)(4)
6-70 (Aggravated kidnapping), if the defendant committed the offense

7-1 with intent to violate or abuse the victim sexually; or
 7-2 (D) an offense under Section 30.02 (Burglary), if
 7-3 the offense is punishable under Subsection (d) of that section and
 7-4 the defendant committed the offense with intent to commit an
 7-5 offense described by Paragraph (A) or (C).

7-6 SECTION 12. Section 12.42(c), Penal Code, is amended to
 7-7 read as follows:

7-8 (c)(1) If [~~Except as provided by Subdivision (2), if~~] it is
 7-9 shown on the trial of a first-degree felony that the defendant has
 7-10 been once before convicted of a felony, on conviction he shall be
 7-11 punished by imprisonment in the institutional division of the Texas
 7-12 Department of Criminal Justice for life, or for any term of not more
 7-13 than 99 years or less than 15 years. In addition to imprisonment,
 7-14 an individual may be punished by a fine not to exceed \$10,000.

7-15 (2) Notwithstanding Subdivision (1), a [A] defendant
 7-16 shall be punished by imprisonment in the institutional division for
 7-17 life if:

7-18 (A) the defendant is convicted of an offense:
 7-19 (i) under Section 22.021 or 22.011, Penal
 7-20 Code;

7-21 (ii) under Section 20.04(a)(4), Penal Code,
 7-22 if the defendant committed the offense with the intent to violate or
 7-23 abuse the victim sexually; [~~or~~]

7-24 (iii) under Section 30.02, Penal Code,
 7-25 punishable under Subsection (d) of that section, if the defendant
 7-26 committed the offense with the intent to commit a felony described
 7-27 by Subparagraph (i) or (ii) [~~or a felony under Section 21.11 or~~
 7-28 ~~22.011, Penal Code]; or~~

7-29 (iv) under Section 43.25, Penal Code; and
 7-30 (B) the defendant has been previously convicted
 7-31 of an offense:

7-32 (i) under Section 43.25 or 43.26, Penal
 7-33 Code, or an offense under Section 43.23, Penal Code, punishable
 7-34 under Subsection (h) of that section;

7-35 (ii) under Section 21.11, 22.011, 22.021,
 7-36 or 25.02, Penal Code;

7-37 (iii) under Section 20.04(a)(4), Penal
 7-38 Code, if the defendant committed the offense with the intent to
 7-39 violate or abuse the victim sexually;

7-40 (iv) under Section 30.02, Penal Code,
 7-41 punishable under Subsection (d) of that section, if the defendant
 7-42 committed the offense with the intent to commit a felony described
 7-43 by Subparagraph (ii) or (iii); or

7-44 (v) under the laws of another state
 7-45 containing elements that are substantially similar to the elements
 7-46 of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

7-47 (3) Notwithstanding Subdivision (1) or (2), a
 7-48 defendant shall be punished for a capital felony if it is shown on
 7-49 the trial of a sexually violent offense punishable as a felony of
 7-50 the first degree that:

7-51 (A) the victim of the offense is younger than 14
 7-52 years of age at the time the offense is committed; and

7-53 (B) the defendant has previously been finally
 7-54 convicted of:

7-55 (i) a sexually violent offense, the victim
 7-56 of which was younger than 14 years of age at the time that offense
 7-57 was committed; or

7-58 (ii) an offense under the laws of another
 7-59 state containing elements that are substantially similar to the
 7-60 elements of a sexually violent offense, the victim of which was
 7-61 younger than 14 years of age at the time that offense was committed.

7-62 SECTION 13. Subchapter D, Chapter 12, Penal Code, is
 7-63 amended by adding Section 12.50 to read as follows:

7-64 Sec. 12.50. PENALTY FOR CERTAIN SEX OFFENSES COMMITTED
 7-65 AGAINST CHILD. (a) This section does not apply to a felony of the
 7-66 first degree punishable under Section 12.42(c)(2) or (3).

7-67 (b) If it is shown on the trial of a sexually violent offense
 7-68 punishable as a felony of the first degree that the victim is
 7-69 younger than 14 years of age at the time the offense is committed,
 7-70 the minimum term of imprisonment for the offense is increased to 25

8-1 years.

8-2 SECTION 14. Section 20.04(d), Penal Code, is amended to
8-3 read as follows:

8-4 (d) At the punishment stage of a trial, the defendant may
8-5 raise the issue as to whether he voluntarily released the victim in
8-6 a safe place. If the defendant proves the issue in the affirmative
8-7 by a preponderance of the evidence, the offense is a felony of the
8-8 second degree. This subsection does not apply if the victim of the
8-9 offense is younger than 14 years of age at the time the offense is
8-10 committed.

8-11 SECTION 15. Section 38.05, Penal Code, is amended by
8-12 amending Subsection (c) and adding Subsection (d) to read as
8-13 follows:

8-14 (c) Except as provided by Subsection (d), an [An] offense
8-15 under this section is a Class A misdemeanor.

8-16 (d) An [, except that the] offense under this section is a
8-17 felony of the third degree if the person who is harbored, concealed,
8-18 provided with a means of avoiding arrest or effecting escape, or
8-19 warned of discovery or apprehension is under arrest for, charged
8-20 with, or convicted of a felony, including an offense under Section
8-21 62.102, Code of Criminal Procedure, or is in custody or detention
8-22 for, is alleged in a petition to have engaged in, or has been
8-23 adjudicated as having engaged in delinquent conduct that violates a
8-24 penal law of the grade of felony, including an offense under Section
8-25 62.102, Code of Criminal Procedure, and the person charged under
8-26 this section knew that the person they harbored, concealed,
8-27 provided with a means of avoiding arrest or effecting escape, or
8-28 warned of discovery or apprehension is under arrest for, charged
8-29 with, or convicted of a felony, or is in custody or detention for,
8-30 is alleged in a petition to have engaged in, or has been adjudicated
8-31 as having engaged in delinquent conduct that violates a penal law of
8-32 the grade of felony.

8-33 SECTION 16. Sections 43.25(c) and (e), Penal Code, are
8-34 amended to read as follows:

8-35 (c) An offense under Subsection (b) is a felony of the
8-36 second degree, except that the offense is a felony of the first
8-37 degree if the victim is younger than 14 years of age at the time the
8-38 offense is committed.

8-39 (e) An offense under Subsection (d) is a felony of the third
8-40 degree, except that the offense is a felony of the first degree if
8-41 the victim is younger than 14 years of age at the time the offense is
8-42 committed.

8-43 SECTION 17. (a) Except as provided by Subsections (b) and
8-44 (c) of this section, the change in law made by this Act applies only
8-45 to an offense committed on or after September 1, 2007. An offense
8-46 committed before September 1, 2007, is covered by the law in effect
8-47 when the offense was committed, and the former law is continued in
8-48 effect for that purpose. For the purposes of this section, an
8-49 offense was committed before September 1, 2007, if any element of
8-50 the offense occurred before that date.

8-51 (b) The change in law made by this Act to Chapter 841, Health
8-52 and Safety Code, applies only to an individual who on or after
8-53 September 1, 2007, is serving a sentence in the Texas Department of
8-54 Criminal Justice or is committed to the Department of State Health
8-55 Services for an offense committed before, on, or after the
8-56 effective date of this Act.

8-57 (c) The change in law made by this Act to Article 12.01, Code
8-58 of Criminal Procedure, does not apply to an offense if the
8-59 prosecution of that offense becomes barred by limitation before the
8-60 effective date of this Act. The prosecution of that offense remains
8-61 barred as if this Act had not taken effect.

8-62 SECTION 18. This Act takes effect September 1, 2007.

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