

By: Madden

H.B. No. 436

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the offense of continuous sexual abuse of a child, the prosecution and punishment of that offense, and the consequences of a conviction for that offense.

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

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)

1 if the defendant committed the offense with the intent to violate or
2 abuse the victim sexually;

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

4 (3) sexual assault under Section 22.011;

5 (4) aggravated sexual assault under Section 22.021;

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

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

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

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

23 (1) is charged in the alternative; or

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

26 (f) A defendant may not be charged with more than one count
27 under Subsection (b) if all of the specific offenses listed in

1 Subsection (c) that are alleged to have been committed are alleged
2 to have been committed against a single victim.

3 (g) An offense under this section is a felony of the first
4 degree, punishable by imprisonment in the Texas Department of
5 Criminal Justice for life, or for any term of not more than 99 years
6 or less than 25 years.

7 SECTION 1.02. Section 508.145, Government Code, is amended
8 by adding Subsection (c-1) to read as follows:

9 (c-1) An inmate serving a sentence for an offense under
10 Section 21.02, Penal Code, is not eligible for release on parole
11 until the inmate's actual calendar time served, without
12 consideration of good conduct time, equals 25 calendar years.

13 SECTION 1.03. Section 508.149(a), Government Code, is
14 amended to read as follows:

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

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

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

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

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

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

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

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

5 (8) a first degree felony under Section 22.021, Penal
6 Code;

7 (9) a first degree felony under Section 22.04, Penal
8 Code;

9 (10) a first degree felony under Section 28.02, Penal
10 Code;

11 (11) a second degree felony under Section 29.02, Penal
12 Code;

13 (12) a first degree felony under Section 29.03, Penal
14 Code;

15 (13) a first degree felony under Section 30.02, Penal
16 Code; [~~or~~]

17 (14) a felony for which the punishment is increased
18 under Section 481.134 or Section 481.140, Health and Safety Code;
19 or

20 (15) an offense under Section 21.02, Penal Code.

21 ARTICLE 2. CONFORMING AMENDMENTS

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

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

27 (1) Section 22.011, Penal Code (sexual assault); [~~or~~]

1 (2) Section 22.021, Penal Code (aggravated sexual
2 assault); or

3 (3) Section 21.02, Penal Code (continuous sexual abuse
4 of young child or children).

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

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

11 (1) the percentage of responsibility attributed to the
12 defendant with respect to a cause of action is greater than 50
13 percent; or

14 (2) the defendant, with the specific intent to do harm
15 to others, acted in concert with another person to engage in the
16 conduct described in the following provisions of the Penal Code and
17 in so doing proximately caused the damages legally recoverable by
18 the claimant:

19 (A) Section 19.02 (murder);

20 (B) Section 19.03 (capital murder);

21 (C) Section 20.04 (aggravated kidnapping);

22 (D) Section 22.02 (aggravated assault);

23 (E) Section 22.011 (sexual assault);

24 (F) Section 22.021 (aggravated sexual assault);

25 (G) Section 22.04 (injury to a child, elderly
26 individual, or disabled individual);

27 (H) Section 32.21 (forgery);

1 (I) Section 32.43 (commercial bribery);

2 (J) Section 32.45 (misapplication of fiduciary
3 property or property of financial institution);

4 (K) Section 32.46 (securing execution of
5 document by deception);

6 (L) Section 32.47 (fraudulent destruction,
7 removal, or concealment of writing); ~~[or]~~

8 (M) conduct described in Chapter 31 the
9 punishment level for which is a felony of the third degree or
10 higher; or

11 (N) Section 21.02 (continuous sexual abuse of
12 young child or children).

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

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

20 (1) Section 19.02 (murder);

21 (2) Section 19.03 (capital murder);

22 (3) Section 20.04 (aggravated kidnapping);

23 (4) Section 22.02 (aggravated assault);

24 (5) Section 22.011 (sexual assault);

25 (6) Section 22.021 (aggravated sexual assault);

26 (7) Section 22.04 (injury to a child, elderly

27 individual, or disabled individual, but not if the conduct occurred

- 1 while providing health care as defined by Section 74.001);
- 2 (8) Section 32.21 (forgery);
- 3 (9) Section 32.43 (commercial bribery);
- 4 (10) Section 32.45 (misapplication of fiduciary
- 5 property or property of financial institution);
- 6 (11) Section 32.46 (securing execution of document by
- 7 deception);
- 8 (12) Section 32.47 (fraudulent destruction, removal,
- 9 or concealment of writing);
- 10 (13) Chapter 31 (theft) the punishment level for which
- 11 is a felony of the third degree or higher;
- 12 (14) Section 49.07 (intoxication assault); ~~[or]~~
- 13 (15) Section 49.08 (intoxication manslaughter); or
- 14 (16) Section 21.02 (continuous sexual abuse of young
- 15 child or children).

16 SECTION 2.04. Section 125.0015(a), Civil Practice and

17 Remedies Code, is amended to read as follows:

18 (a) A person who maintains a place to which persons

19 habitually go for the following purposes and who knowingly

20 tolerates the activity and furthermore fails to make reasonable

21 attempts to abate the activity maintains a common nuisance:

22 (1) discharge of a firearm in a public place as

23 prohibited by the Penal Code;

24 (2) reckless discharge of a firearm as prohibited by

25 the Penal Code;

26 (3) engaging in organized criminal activity as a

27 member of a combination as prohibited by the Penal Code;

1 (4) delivery, possession, manufacture, or use of a
2 controlled substance in violation of Chapter 481, Health and Safety
3 Code;

4 (5) gambling, gambling promotion, or communicating
5 gambling information as prohibited by the Penal Code;

6 (6) prostitution, promotion of prostitution, or
7 aggravated promotion of prostitution as prohibited by the Penal
8 Code;

9 (7) compelling prostitution as prohibited by the Penal
10 Code;

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

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

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

18 (11) aggravated sexual assault as described by Section
19 22.021, Penal Code;

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

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

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

26 (15) murder as described by Section 19.02, Penal Code;

27 [~~or~~]

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

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

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

7 (a) A person who is the victim of an offense under Section
8 21.02, 22.011, or 22.021, Penal Code, or a prosecuting attorney
9 acting on behalf of the person, may file an application for a
10 protective order under this chapter without regard to the
11 relationship between the applicant and the alleged offender.

12 SECTION 2.06. Article 12.01, Code of Criminal Procedure, is
13 amended to read as follows:

14 Art. 12.01. FELONIES. Except as provided in Article 12.03,
15 felony indictments may be presented within these limits, and not
16 afterward:

17 (1) no limitation:

18 (A) murder and manslaughter;

19 (B) continuous sexual abuse of young child or
20 children under Section 21.02, Penal Code, or sexual assault, if
21 during the investigation of the applicable offense biological
22 matter is collected and subjected to forensic DNA testing and the
23 testing results show that the matter does not match the victim or
24 any other person whose identity is readily ascertained; or

25 (C) an offense involving leaving the scene of an
26 accident under Section 550.021, Transportation Code, if the
27 accident resulted in the death of a person;

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

3 (A) theft of any estate, real, personal or mixed,
4 by an executor, administrator, guardian or trustee, with intent to
5 defraud any creditor, heir, legatee, ward, distributee,
6 beneficiary or settlor of a trust interested in such estate;

7 (B) theft by a public servant of government
8 property over which he exercises control in his official capacity;

9 (C) forgery or the uttering, using or passing of
10 forged instruments;

11 (D) injury to a child, elderly individual, or
12 disabled individual punishable as a felony of the first degree
13 under Section 22.04, Penal Code;

14 (E) sexual assault, except as provided by
15 Subdivision (1) or (5); or

16 (F) arson;

17 (3) seven years from the date of the commission of the
18 offense:

19 (A) misapplication of fiduciary property or
20 property of a financial institution;

21 (B) securing execution of document by deception;

22 or

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

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

27 (A) theft, burglary, robbery;

1 (B) kidnapping;

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

5 (D) abandoning or endangering a child; or

6 (E) insurance fraud;

7 (5) ten years from the 18th birthday of the victim of
8 the offense:

9 (A) indecency with a child under Section
10 21.11(a)(1) or (2), Penal Code; or

11 (B) except as provided by Subdivision (1), sexual
12 assault under Section 22.011(a)(2), Penal Code, [~~or~~] aggravated
13 sexual assault under Section 22.021(a)(1)(B), Penal Code, or
14 continuous sexual abuse of young child or children under Section
15 21.02, Penal Code; or

16 (6) three years from the date of the commission of the
17 offense: all other felonies.

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

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

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

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

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

3 (A) Section 19.03 (Capital Murder);

4 (B) Section 20.04 (Aggravated Kidnapping);

5 (C) Section 22.021 (Aggravated Sexual Assault);

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

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

11 (F) Section 29.03 (Aggravated Robbery);

12 (G) Section 30.02 (Burglary); [~~or~~]

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

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

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

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

27 SECTION 2.09. Article 17.032(a), Code of Criminal

1 Procedure, is amended to read as follows:

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

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

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

20 Art. 17.091. NOTICE OF CERTAIN BAIL REDUCTIONS
21 REQUIRED. Before a judge or magistrate reduces the amount of bail
22 set for a defendant charged with an offense listed in Section 3g,
23 Article 42.12, or an offense described by Article 62.001(5)
24 [~~62.01(5)~~], the judge or magistrate shall provide:

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

27 (2) on request of the attorney representing the state

1 or the defendant or the defendant's counsel, an opportunity for a
2 hearing concerning the proposed bail reduction.

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

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

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

15 (a) A person who is indicted for or who waives indictment
16 for an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021,
17 Penal Code, shall, at the direction of the court, undergo a medical
18 procedure or test designed to show or help show whether the person
19 has a sexually transmitted disease or has acquired immune
20 deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)
21 infection, antibodies to HIV, or infection with any other probable
22 causative agent of AIDS. The court may direct the person to undergo
23 the procedure or test on its own motion or on the request of the
24 victim of the alleged offense. If the person refuses to submit
25 voluntarily to the procedure or test, the court shall require the
26 person to submit to the procedure or test. The court may require a
27 defendant previously required under this article to undergo a

1 medical procedure or test on indictment for an offense to undergo a
2 subsequent medical procedure or test following conviction of the
3 offense. The person performing the procedure or test shall make the
4 test results available to the local health authority, and the local
5 health authority shall be required to make the notification of the
6 test result to the victim of the alleged offense and to the
7 defendant.

8 SECTION 2.13. Section 4, Article 37.07, Code of Criminal
9 Procedure, is amended by amending Subsections (a) and (b) and
10 adding Subsection (e) to read as follows:

11 (a) In the penalty phase of the trial of a felony case in
12 which the punishment is to be assessed by the jury rather than the
13 court, if the offense of which the jury has found the defendant
14 guilty is listed in Section 3g(a)(1), Article 42.12, of this code or
15 if the judgment contains an affirmative finding under Section
16 3g(a)(2), Article 42.12, of this code, unless the defendant has
17 been convicted of an offense under Section 21.02, Penal Code, or a
18 capital felony, the court shall charge the jury in writing as
19 follows:

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

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

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

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

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

22 (b) In the penalty phase of the trial of a felony case in
23 which the punishment is to be assessed by the jury rather than the
24 court, if the offense is punishable as a felony of the first degree,
25 if a prior conviction has been alleged for enhancement of
26 punishment as provided by Section 12.42(b), (c), or (d), Penal
27 Code, or if the offense is a felony not designated as a capital

1 felony or a felony of the first, second, or third degree and the
2 maximum term of imprisonment that may be imposed for the offense is
3 longer than 60 years, unless the offense of which the jury has found
4 the defendant guilty is an offense under Section 21.02, Penal Code,
5 or is listed in Section 3g(a)(1), Article 42.12, of this code or the
6 judgment contains an affirmative finding under Section 3g(a)(2),
7 Article 42.12, of this code, the court shall charge the jury in
8 writing as follows:

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

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

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

26 "It cannot accurately be predicted how the parole law and
27 good conduct time might be applied to this defendant if he is

1 sentenced to a term of imprisonment, because the application of
2 these laws will depend on decisions made by prison and parole
3 authorities.

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

9 (e) In the penalty phase of the trial of an offense under
10 Section 21.02, Penal Code, in which the punishment is to be assessed
11 by the jury rather than the court, if the jury finds the defendant
12 guilty, the court shall charge the jury in writing as follows:

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

16 "Under the law applicable in this case, the defendant will
17 not become eligible for parole until the actual time served equals
18 25 years, without consideration of any good conduct time.
19 Eligibility for parole does not guarantee that parole will be
20 granted.

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

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

27 SECTION 2.14. Section 1, Article 38.071, Code of Criminal

1 Procedure, is amended to read as follows:

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

- 7 (1) Section 19.02 (Murder);
- 8 (2) Section 19.03 (Capital Murder);
- 9 (3) Section 19.04 (Manslaughter);
- 10 (4) Section 20.04 (Aggravated Kidnapping);
- 11 (5) Section 21.11 (Indecency with a Child);
- 12 (6) Section 22.011 (Sexual Assault);
- 13 (7) Section 22.02 (Aggravated Assault);
- 14 (8) Section 22.021 (Aggravated Sexual Assault);
- 15 (9) Section 22.04(e) (Injury to a Child, Elderly
16 Individual, or Disabled Individual);
- 17 (10) Section 22.04(f) (Injury to a Child, Elderly
18 Individual, or Disabled Individual), if the conduct is committed
19 intentionally or knowingly;
- 20 (11) Section 25.02 (Prohibited Sexual Conduct);
- 21 (12) Section 29.03 (Aggravated Robbery); ~~[or]~~
- 22 (13) Section 43.25 (Sexual Performance by a Child); or
- 23 (14) Section 21.02 (Continuous Sexual Abuse of Young
24 Child or Children).

25 SECTION 2.15. Article 42.017, Code of Criminal Procedure,
26 is amended to read as follows:

27 Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the

1 trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or
2 43.25, Penal Code, the judge shall make an affirmative finding of
3 fact and enter the affirmative finding in the judgment in the case
4 if the judge determines that:

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

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

11 SECTION 2.16. Section 5(d), Article 42.12, Code of Criminal
12 Procedure, is amended to read as follows:

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

15 (1) the defendant is charged with an offense:

16 (A) under Section 21.02, Penal Code;

17 (B) under Section 49.04, 49.05, 49.06, 49.07, or
18 49.08, Penal Code; or

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

24 (2) the defendant:

25 (A) is charged with an offense under Section
26 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
27 victim, or a felony described by Section 13B(b) of this article;

1 and

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

5 SECTION 2.17. Article 56.01, Code of Criminal Procedure, is
6 amended by adding Subdivision (2-a) to read as follows:

7 (2-a) "Sexual assault" includes an offense under
8 Section 21.02, Penal Code.

9 SECTION 2.18. Article 56.02(a), Code of Criminal Procedure,
10 is amended to read as follows:

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

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

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

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

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

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

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

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

13 (6) the right to receive information regarding
14 compensation to victims of crime as provided by Subchapter B,
15 including information related to the costs that may be compensated
16 under that subchapter and the amount of compensation, eligibility
17 for compensation, and procedures for application for compensation
18 under that subchapter, the payment for a medical examination under
19 Article 56.06 for a victim of a sexual assault, and when requested,
20 to referral to available social service agencies that may offer
21 additional assistance;

22 (7) the right to be informed, upon request, of parole
23 procedures, to participate in the parole process, to be notified,
24 if requested, of parole proceedings concerning a defendant in the
25 victim's case, to provide to the Board of Pardons and Paroles for
26 inclusion in the defendant's file information to be considered by
27 the board prior to the parole of any defendant convicted of any

1 crime subject to this subchapter, and to be notified, if requested,
2 of the defendant's release;

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

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

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

18 (11) the right to counseling, on request, regarding
19 acquired immune deficiency syndrome (AIDS) and human
20 immunodeficiency virus (HIV) infection and testing for acquired
21 immune deficiency syndrome (AIDS), human immunodeficiency virus
22 (HIV) infection, antibodies to HIV, or infection with any other
23 probable causative agent of AIDS, if the offense is an offense under
24 Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

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

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

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

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

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

14 SECTION 2.19. (a) Article 62.001(5), Code of Criminal
15 Procedure, as renumbered from former Article 62.01(5), Code of
16 Criminal Procedure, and amended by Chapter 1008, Acts of the 79th
17 Legislature, Regular Session, 2005, is reenacted and amended to
18 conform to an amendment to former Article 62.01(5) by Chapter 1273,
19 Acts of the 79th Legislature, Regular Session, 2005, and is further
20 amended to read as follows:

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

26 (A) a violation of Section 21.02 (Continuous
27 sexual abuse of young child or children), 21.11 (Indecency with a

1 child), 22.011 (Sexual assault), 22.021 (Aggravated sexual
2 assault), or 25.02 (Prohibited sexual conduct), Penal Code;

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

6 (C) a violation of Section 20.04(a)(4)
7 (Aggravated kidnapping), Penal Code, if the actor committed the
8 offense or engaged in the conduct with intent to violate or abuse
9 the victim sexually;

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

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

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

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

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

26 (G) an attempt, conspiracy, or solicitation, as
27 defined by Chapter 15, Penal Code, to commit an offense or engage in

1 conduct listed in Paragraph (A), (B), (C), (D), or (E);

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

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

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

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

19 SECTION 2.20. Article 62.001(6), Code of Criminal
20 Procedure, is amended to read as follows:

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

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

27 (B) an offense under Section 43.25 (Sexual

1 performance by a child), Penal Code;

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

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

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

15 SECTION 2.21. Article 102.0186(a), Code of Criminal
16 Procedure, is amended to read as follows:

17 (a) A person convicted of an offense under Section 21.02,
18 21.11, 22.011(a)(2), 22.021(a)(1)(B), 43.25, 43.251, or 43.26,
19 Penal Code, shall pay \$100 on conviction of the offense.

20 SECTION 2.22. Section 25.0341(a), Education Code, as added
21 by Chapter 997, Acts of the 79th Legislature, Regular Session,
22 2005, is amended to read as follows:

23 (a) This section applies only to:

24 (1) a student:

25 (A) who has been convicted of or placed on
26 deferred adjudication for the offense of continuous sexual abuse of
27 young child or children under Section 21.02, Penal Code, sexual

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

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

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

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

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

17 SECTION 2.23. Section 37.007(a), Education Code, is amended
18 to read as follows:

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

22 (1) uses, exhibits, or possesses:

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

25 (B) an illegal knife as defined by Section
26 46.01(6), Penal Code, or by local policy;

27 (C) a club as defined by Section 46.01(1), Penal

1 Code; or

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

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

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

9 (B) arson under Section 28.02, Penal Code;

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

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

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

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

20 (G) manslaughter under Section 19.04, Penal
21 Code; ~~or~~

22 (H) criminally negligent homicide under Section
23 19.05, Penal Code; or

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

26 (3) engages in conduct specified by Section
27 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

1 SECTION 2.24. Section 33.009, Family Code, is amended to
2 read as follows:

3 Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A
4 court or the guardian ad litem or attorney ad litem for the minor
5 shall report conduct reasonably believed to violate Section 21.02,
6 22.011, 22.021, or 25.02, Penal Code, based on information obtained
7 during a confidential court proceeding held under this chapter to:

- 8 (1) any local or state law enforcement agency;
- 9 (2) the Department of Family and Protective [~~and~~
10 ~~Regulatory~~] Services, if the alleged conduct involves a person
11 responsible for the care, custody, or welfare of the child;
- 12 (3) the state agency that operates, licenses,
13 certifies, or registers the facility in which the alleged conduct
14 occurred, if the alleged conduct occurred in a facility operated,
15 licensed, certified, or registered by a state agency; or
- 16 (4) an appropriate agency designated by the court.

17 SECTION 2.25. Section 33.010, Family Code, is amended to
18 read as follows:

19 Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other
20 law, information obtained by the Department of Family and
21 Protective [~~and Regulatory~~] Services or another entity under
22 Section 33.008 or 33.009 is confidential except to the extent
23 necessary to prove a violation of Section 21.02, 22.011, 22.021, or
24 25.02, Penal Code.

25 SECTION 2.26. Section 156.104, Family Code, is amended to
26 read as follows:

27 Sec. 156.104. MODIFICATION OF ORDER ON CONVICTION FOR CHILD

1 ABUSE; PENALTY. (a) Except as provided by Section 156.1045, the
2 conviction of a conservator, or an order deferring adjudication
3 with regard to the conservator, for an offense involving the abuse
4 of a child under Section 21.02, 21.11, 22.011, or 22.021, Penal
5 Code, is a material and substantial change of circumstances
6 sufficient to justify a temporary order and modification of an
7 existing court order or portion of a decree that provides for the
8 appointment of a conservator or that sets the terms and conditions
9 of conservatorship or for the possession of or access to a child.

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

17 SECTION 2.27. Section 161.001, Family Code, is amended to
18 read as follows:

19 Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD
20 RELATIONSHIP. The court may order termination of the parent-child
21 relationship if the court finds by clear and convincing evidence:

22 (1) that the parent has:

23 (A) voluntarily left the child alone or in the
24 possession of another not the parent and expressed an intent not to
25 return;

26 (B) voluntarily left the child alone or in the
27 possession of another not the parent without expressing an intent

1 to return, without providing for the adequate support of the child,
2 and remained away for a period of at least three months;

3 (C) voluntarily left the child alone or in the
4 possession of another without providing adequate support of the
5 child and remained away for a period of at least six months;

6 (D) knowingly placed or knowingly allowed the
7 child to remain in conditions or surroundings which endanger the
8 physical or emotional well-being of the child;

9 (E) engaged in conduct or knowingly placed the
10 child with persons who engaged in conduct which endangers the
11 physical or emotional well-being of the child;

12 (F) failed to support the child in accordance
13 with the parent's ability during a period of one year ending within
14 six months of the date of the filing of the petition;

15 (G) abandoned the child without identifying the
16 child or furnishing means of identification, and the child's
17 identity cannot be ascertained by the exercise of reasonable
18 diligence;

19 (H) voluntarily, and with knowledge of the
20 pregnancy, abandoned the mother of the child beginning at a time
21 during her pregnancy with the child and continuing through the
22 birth, failed to provide adequate support or medical care for the
23 mother during the period of abandonment before the birth of the
24 child, and remained apart from the child or failed to support the
25 child since the birth;

26 (I) contumaciously refused to submit to a
27 reasonable and lawful order of a court under Subchapter D, Chapter

1 261;

2 (J) been the major cause of:

3 (i) the failure of the child to be enrolled
4 in school as required by the Education Code; or

5 (ii) the child's absence from the child's
6 home without the consent of the parents or guardian for a
7 substantial length of time or without the intent to return;

8 (K) executed before or after the suit is filed an
9 unrevoked or irrevocable affidavit of relinquishment of parental
10 rights as provided by this chapter;

11 (L) been convicted or has been placed on
12 community supervision, including deferred adjudication community
13 supervision, for being criminally responsible for the death or
14 serious injury of a child under the following sections of the Penal
15 Code or adjudicated under Title 3 for conduct that caused the death
16 or serious injury of a child and that would constitute a violation
17 of one of the following Penal Code sections:

18 (i) Section 19.02 (murder);

19 (ii) Section 19.03 (capital murder);

20 (iii) Section 19.04 (manslaughter);

21 (iv) Section 21.11 (indecent with a
22 child);

23 (v) Section 22.01 (assault);

24 (vi) Section 22.011 (sexual assault);

25 (vii) Section 22.02 (aggravated assault);

26 (viii) Section 22.021 (aggravated sexual
27 assault);

1 (ix) Section 22.04 (injury to a child,
2 elderly individual, or disabled individual);

3 (x) Section 22.041 (abandoning or
4 endangering child);

5 (xi) Section 25.02 (prohibited sexual
6 conduct);

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

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

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

13 (M) had his or her parent-child relationship
14 terminated with respect to another child based on a finding that the
15 parent's conduct was in violation of Paragraph (D) or (E) or
16 substantially equivalent provisions of the law of another state;

17 (N) constructively abandoned the child who has
18 been in the permanent or temporary managing conservatorship of the
19 Department of Family and Protective Services or an authorized
20 agency for not less than six months, and:

21 (i) the department or authorized agency has
22 made reasonable efforts to return the child to the parent;

23 (ii) the parent has not regularly visited
24 or maintained significant contact with the child; and

25 (iii) the parent has demonstrated an
26 inability to provide the child with a safe environment;

27 (O) failed to comply with the provisions of a

1 court order that specifically established the actions necessary for
2 the parent to obtain the return of the child who has been in the
3 permanent or temporary managing conservatorship of the Department
4 of Family and Protective Services for not less than nine months as a
5 result of the child's removal from the parent under Chapter 262 for
6 the abuse or neglect of the child;

7 (P) used a controlled substance, as defined by
8 Chapter 481, Health and Safety Code, in a manner that endangered the
9 health or safety of the child, and:

10 (i) failed to complete a court-ordered
11 substance abuse treatment program; or

12 (ii) after completion of a court-ordered
13 substance abuse treatment program, continued to abuse a controlled
14 substance;

15 (Q) knowingly engaged in criminal conduct that
16 has resulted in the parent's:

17 (i) conviction of an offense; and

18 (ii) confinement or imprisonment and
19 inability to care for the child for not less than two years from the
20 date of filing the petition;

21 (R) been the cause of the child being born
22 addicted to alcohol or a controlled substance, other than a
23 controlled substance legally obtained by prescription, as defined
24 by Section 261.001;

25 (S) voluntarily delivered the child to a
26 designated emergency infant care provider under Section 262.302
27 without expressing an intent to return for the child; or

1 (T) been convicted of the murder of the other
2 parent of the child under Section 19.02 or 19.03, Penal Code, or
3 under a law of another state, federal law, the law of a foreign
4 country, or the Uniform Code of Military Justice that contains
5 elements that are substantially similar to the elements of an
6 offense under Section 19.02 or 19.03, Penal Code; and

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

9 SECTION 2.28. Section 161.007, Family Code, is amended to
10 read as follows:

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

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

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

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

22 SECTION 2.29. Section 261.001(1), Family Code, is amended
23 to read as follows:

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

26 (A) mental or emotional injury to a child that
27 results in an observable and material impairment in the child's

1 growth, development, or psychological functioning;

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

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

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

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

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

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

27 (H) causing, permitting, encouraging, engaging

1 in, or allowing the photographing, filming, or depicting of the
2 child if the person knew or should have known that the resulting
3 photograph, film, or depiction of the child is obscene as defined by
4 Section 43.21, Penal Code, or pornographic;

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

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

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

15 SECTION 2.30. Section 262.2015(b), Family Code, is amended
16 to read as follows:

17 (b) The court may find under Subsection (a) that a parent
18 has subjected the child to aggravated circumstances if:

19 (1) the parent abandoned the child without
20 identification or a means for identifying the child;

21 (2) the child is a victim of serious bodily injury or
22 sexual abuse inflicted by the parent or by another person with the
23 parent's consent;

24 (3) the parent has engaged in conduct against the
25 child that would constitute an offense under the following
26 provisions of the Penal Code:

27 (A) Section 19.02 (murder);

- 1 (B) Section 19.03 (capital murder);
2 (C) Section 19.04 (manslaughter);
3 (D) Section 21.11 (indecent with a child);
4 (E) Section 22.011 (sexual assault);
5 (F) Section 22.02 (aggravated assault);
6 (G) Section 22.021 (aggravated sexual assault);
7 (H) Section 22.04 (injury to a child, elderly
8 individual, or disabled individual);
9 (I) Section 22.041 (abandoning or endangering
10 child);
11 (J) Section 25.02 (prohibited sexual conduct);
12 (K) Section 43.25 (sexual performance by a
13 child); ~~[or]~~
14 (L) Section 43.26 (possession or promotion of
15 child pornography); or
16 (M) Section 21.02 (continuous sexual abuse of
17 young child or children);

18 (4) the parent voluntarily left the child alone or in
19 the possession of another person not the parent of the child for at
20 least six months without expressing an intent to return and without
21 providing adequate support for the child;

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

26 (6) the parent has been convicted for:

27 (A) the murder of another child of the parent and

1 the offense would have been an offense under 18 U.S.C. Section
2 1111(a) if the offense had occurred in the special maritime or
3 territorial jurisdiction of the United States;

4 (B) the voluntary manslaughter of another child
5 of the parent and the offense would have been an offense under 18
6 U.S.C. Section 1112(a) if the offense had occurred in the special
7 maritime or territorial jurisdiction of the United States;

8 (C) aiding or abetting, attempting, conspiring,
9 or soliciting an offense under Subdivision (A) or (B); or

10 (D) the felony assault of the child or another
11 child of the parent that resulted in serious bodily injury to the
12 child or another child of the parent; or

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

15 SECTION 2.31. Section 411.1471(a), Government Code, is
16 amended to read as follows:

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

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

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

22 (B) Section 21.11;

23 (C) Section 22.011;

24 (D) Section 22.021;

25 (E) Section 25.02;

26 (F) Section 30.02(d);

27 (G) Section 43.05;

1 (H) Section 43.25; [~~or~~]

2 (I) Section 43.26; or

3 (J) Section 21.02;

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

8 (3) convicted of an offense under Section 21.07 or
9 21.08, Penal Code.

10 SECTION 2.32. Section 420.003(4), Government Code, is
11 amended to read as follows:

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

15 SECTION 2.33. Section 499.027(b), Government Code, is
16 amended to read as follows:

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

19 (1) the inmate is awaiting transfer to the
20 institutional division, or serving a sentence, for an offense for
21 which the judgment contains an affirmative finding under Section
22 3g(a)(2), Article 42.12, Code of Criminal Procedure;

23 (2) the inmate is awaiting transfer to the
24 institutional division, or serving a sentence, for an offense
25 listed in one of the following sections of the Penal Code:

26 (A) Section 19.02 (murder);

27 (B) Section 19.03 (capital murder);

- 1 (C) Section 19.04 (manslaughter);
2 (D) Section 20.03 (kidnapping);
3 (E) Section 20.04 (aggravated kidnapping);
4 (F) Section 21.11 (indecent with a child);
5 (G) Section 22.011 (sexual assault);
6 (H) Section 22.02 (aggravated assault);
7 (I) Section 22.021 (aggravated sexual assault);
8 (J) Section 22.04 (injury to a child or an
9 elderly individual);
10 (K) Section 25.02 (prohibited sexual conduct);
11 (L) Section 25.08 (sale or purchase of a child);
12 (M) Section 28.02 (arson);
13 (N) Section 29.02 (robbery);
14 (O) Section 29.03 (aggravated robbery);
15 (P) Section 30.02 (burglary), if the offense is
16 punished as a first-degree felony under that section;
17 (Q) Section 43.04 (aggravated promotion of
18 prostitution);
19 (R) Section 43.05 (compelling prostitution);
20 (S) Section 43.24 (sale, distribution, or
21 display of harmful material to minor);
22 (T) Section 43.25 (sexual performance by a
23 child);
24 (U) Section 46.10 (deadly weapon in penal
25 institution);
26 (V) Section 15.01 (criminal attempt), if the
27 offense attempted is listed in this subsection;

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

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

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

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

13 SECTION 2.34. Section 501.061(a), Government Code, is
14 amended to read as follows:

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

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

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

22 (3) the inmate requests the procedure in writing;

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

26 (5) a psychiatrist and a psychologist who are
27 appointed by the department and have experience in the treatment of

1 sex offenders:

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

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

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

8 (7) the inmate has not previously requested that the
9 department perform the procedure and subsequently withdrawn the
10 request; and

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

13 SECTION 2.35. Section 508.046, Government Code, is amended
14 to read as follows:

15 Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on
16 parole an inmate who was convicted of an offense under Section
17 21.02, 21.11(a)(1), or 22.021, Penal Code, or who is required under
18 Section 508.145(c) to serve 35 calendar years before becoming
19 eligible for release on parole, all members of the board must vote
20 on the release on parole of the inmate, and at least two-thirds of
21 the members must vote in favor of the release on parole. A member of
22 the board may not vote on the release unless the member first
23 receives a copy of a written report from the department on the
24 probability that the inmate would commit an offense after being
25 released on parole.

26 SECTION 2.36. Section 508.117(g), Government Code, is
27 amended by adding Subdivision (2-a) to read as follows:

1 (2-a) "Sexual assault" includes an offense under
2 Section 21.02, Penal Code.

3 SECTION 2.37. Section 508.151(a), Government Code, is
4 amended to read as follows:

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

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

12 (2) has never had a conviction with a judgment that
13 contains an affirmative finding under Section 3g(a)(2), Article
14 42.12, Code of Criminal Procedure.

15 SECTION 2.38. Section 508.187(a), Government Code, is
16 amended to read as follows:

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

19 (1) Section 43.25 or 43.26, Penal Code;

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

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

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

1 or (3).

2 SECTION 2.39. Section 508.189(a), Government Code, is
3 amended to read as follows:

4 (a) A parole panel shall require as a condition of parole or
5 mandatory supervision that a releasee convicted of an offense under
6 Section 21.02, 21.08, 21.11, 22.011, 22.021, 25.02, 43.25, or
7 43.26, Penal Code, pay to the division a parole supervision fee of
8 \$5 each month during the period of parole supervision.

9 SECTION 2.40. Section 242.126(c), Health and Safety Code,
10 is amended to read as follows:

11 (c) The agency shall begin the investigation:

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

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

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

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

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

26 (E) a resident has suffered bodily injury, as
27 that term is defined by Section 1.07, Penal Code, because of conduct

1 alleged in the report of abuse or neglect or other complaint; or

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

7 SECTION 2.41. Section 250.006(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) A person for whom the facility is entitled to obtain
10 criminal history record information may not be employed in a
11 facility if the person has been convicted of an offense listed in
12 this subsection:

13 (1) an offense under Chapter 19, Penal Code (criminal
14 homicide);

15 (2) an offense under Chapter 20, Penal Code
16 (kidnapping and unlawful restraint);

17 (3) an offense under Section 21.02, Penal Code
18 (continuous sexual abuse of young child or children), or Section
19 21.11, Penal Code (indecent with a child);

20 (4) an offense under Section 22.011, Penal Code
21 (sexual assault);

22 (5) an offense under Section 22.02, Penal Code
23 (aggravated assault);

24 (6) an offense under Section 22.04, Penal Code (injury
25 to a child, elderly individual, or disabled individual);

26 (7) an offense under Section 22.041, Penal Code
27 (abandoning or endangering child);

1 (8) an offense under Section 22.08, Penal Code (aiding
2 suicide);

3 (9) an offense under Section 25.031, Penal Code
4 (agreement to abduct from custody);

5 (10) an offense under Section 25.08, Penal Code (sale
6 or purchase of a child);

7 (11) an offense under Section 28.02, Penal Code
8 (arson);

9 (12) an offense under Section 29.02, Penal Code
10 (robbery);

11 (13) an offense under Section 29.03, Penal Code
12 (aggravated robbery); or

13 (14) a conviction under the laws of another state,
14 federal law, or the Uniform Code of Military Justice for an offense
15 containing elements that are substantially similar to the elements
16 of an offense listed under Subdivisions (1)-(13).

17 SECTION 2.42. Section 841.002(8), Health and Safety Code,
18 is amended to read as follows:

19 (8) "Sexually violent offense" means:

20 (A) an offense under Section 21.02, 21.11(a)(1),
21 22.011, or 22.021, Penal Code;

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

25 (C) an offense under Section 30.02, Penal Code,
26 if the offense is punishable under Subsection (d) of that section
27 and the person committed the offense with the intent to commit an

1 offense listed in Paragraph (A) or (B);

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

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

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

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

19 SECTION 2.43. Section 301.4535(a), Occupations Code, is
20 amended to read as follows:

21 (a) The board shall suspend a nurse's license or refuse to
22 issue a license to an applicant on proof that the nurse or applicant
23 has been initially convicted of:

24 (1) murder under Section 19.02, Penal Code, capital
25 murder under Section 19.03, Penal Code, or manslaughter under
26 Section 19.04, Penal Code;

27 (2) kidnapping or unlawful restraint under Chapter 20,

1 Penal Code, and the offense was punished as a felony or state jail
2 felony;

3 (3) sexual assault under Section 22.011, Penal Code;

4 (4) aggravated sexual assault under Section 22.021,
5 Penal Code;

6 (5) continuous sexual abuse of young child or children
7 under Section 21.02, Penal Code, or indecency with a child under
8 Section 21.11, Penal Code;

9 (6) aggravated assault under Section 22.02, Penal
10 Code;

11 (7) intentionally, knowingly, or recklessly injuring
12 a child, elderly individual, or disabled individual under Section
13 22.04, Penal Code;

14 (8) intentionally, knowingly, or recklessly
15 abandoning or endangering a child under Section 22.041, Penal Code;

16 (9) aiding suicide under Section 22.08, Penal Code,
17 and the offense was punished as a state jail felony;

18 (10) an offense under Section 25.07, Penal Code,
19 punished as a felony;

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

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

24 (13) the sale or purchase of a child under Section
25 25.08, Penal Code;

26 (14) robbery under Section 29.02, Penal Code;

27 (15) aggravated robbery under Section 29.03, Penal

1 Code;

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

5 (17) an offense under the law of another state,
6 federal law, or the Uniform Code of Military Justice that contains
7 elements that are substantially similar to the elements of an
8 offense listed in this subsection.

9 SECTION 2.44. Section 3.03(b), Penal Code, is amended to
10 read as follows:

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

15 (1) an offense:

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

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

24 (2) an offense:

25 (A) under Section 21.02, 21.11, 22.011, 22.021,
26 25.02, or 43.25 committed against a victim younger than 17 years of
27 age at the time of the commission of the offense regardless of

1 whether the accused is convicted of violations of the same section
2 more than once or is convicted of violations of more than one
3 section; or

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

11 (3) an offense:

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

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

20 SECTION 2.45. Section 12.35(c), Penal Code, is amended to
21 read as follows:

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

25 (1) a deadly weapon as defined by Section 1.07 was used
26 or exhibited during the commission of the offense or during
27 immediate flight following the commission of the offense, and that

1 the individual used or exhibited the deadly weapon or was a party to
2 the offense and knew that a deadly weapon would be used or
3 exhibited; or

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

6 (A) under Section 21.02 or listed in Section
7 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

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

11 SECTION 2.46. Section 12.42(c)(2), Penal Code, is amended
12 to read as follows:

13 (2) A defendant shall be punished by imprisonment in
14 the Texas Department of Criminal Justice [~~institutional division~~]
15 for life if:

16 (A) the defendant is convicted of an offense:

17 (i) under Section 21.02, 22.021, or 22.011,
18 Penal Code;

19 (ii) under Section 20.04(a)(4), Penal Code,
20 if the defendant committed the offense with the intent to violate or
21 abuse the victim sexually; or

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

27 (B) the defendant has been previously convicted

1 of an offense:

2 (i) under Section 43.25 or 43.26, Penal
3 Code, or an offense under Section 43.23, Penal Code, punishable
4 under Subsection (h) of that section;

5 (ii) under Section 21.02, 21.11, 22.011,
6 22.021, or 25.02, Penal Code;

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

10 (iv) under Section 30.02, Penal Code,
11 punishable under Subsection (d) of that section, if the defendant
12 committed the offense with the intent to commit a felony described
13 by Subparagraph (ii) or (iii); or

14 (v) under the laws of another state
15 containing elements that are substantially similar to the elements
16 of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

17 SECTION 2.47. Section 15.031(b), Penal Code, is amended to
18 read as follows:

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

1 SECTION 2.48. Section 19.03(a), Penal Code, is amended to
2 read as follows:

3 (a) A person commits an offense if the person commits murder
4 as defined under Section 19.02(b)(1) and:

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

8 (2) the person intentionally commits the murder in the
9 course of committing or attempting to commit kidnapping, burglary,
10 robbery, continuous sexual abuse of young child or children,
11 aggravated sexual assault, arson, obstruction or retaliation, or
12 terroristic threat under Section 22.07(a)(1), (3), (4), (5), or
13 (6);

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

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

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

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

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

25 (6) the person:

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

1 (B) while serving a sentence of life imprisonment
2 or a term of 99 years for an offense under Section 20.04, 22.021, or
3 29.03, murders another;

4 (7) the person murders more than one person:

5 (A) during the same criminal transaction; or

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

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

11 (9) the person murders another person in retaliation
12 for or on account of the service or status of the other person as a
13 judge or justice of the supreme court, the court of criminal
14 appeals, a court of appeals, a district court, a criminal district
15 court, a constitutional county court, a statutory county court, a
16 justice court, or a municipal court.

17 SECTION 2.49. Section 38.17(a), Penal Code, is amended to
18 read as follows:

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

21 (1) the actor observes the commission or attempted
22 commission of an offense prohibited by Section 21.02 or
23 22.021(a)(2)(B) under circumstances in which a reasonable person
24 would believe that an offense of a sexual or assaultive nature was
25 being committed or was about to be committed against the child;

26 (2) the actor fails to assist the child or immediately
27 report the commission of the offense to a peace officer or law

1 enforcement agency; and

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

5 ARTICLE 3. TRANSITION; EFFECTIVE DATE

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

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

20 SECTION 3.02. This Act takes effect September 1, 2007.