

By: Pitts

H.B. No. 2756

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the creation of the offense of assault with bodily
3 fluids, the prosecution and punishment of that offense, and the
4 consequences of a conviction for that offense.

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

6 SECTION 1. Chapter 22, Penal Code, is amended by adding
7 Section 22.03 to read as follows:

8 Sec. 22.03. ASSAULT WITH BODILY FLUIDS. (a) A person
9 commits an offense if:

10 (1) with the intent to assault, harass, or alarm, the
11 person causes another person to contact the blood, seminal fluid,
12 vaginal fluid, saliva, urine, or feces of the actor, any other
13 person, or an animal;

14 (2) with the intent to arouse or gratify the sexual
15 desire of any person, the person causes another person, without
16 that person's consent, to contact the blood, seminal fluid, vaginal
17 fluid, saliva, urine, or feces of the actor, any other person, or an
18 animal; or

19 (3) with the intent to arouse or gratify the sexual
20 desire of any person, the person causes a child to contact the
21 blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the
22 actor, any other person, or an animal.

23 (b) In this section, "child" has the meaning assigned by
24 Section 22.011(c)(1).

1 (c) An offense under this section is:

2 (1) a Class A misdemeanor, if the offense is committed
3 under Subsection (a)(1);

4 (2) a felony of the third degree, if the offense is
5 committed under Subsection (a)(2); and

6 (3) a felony of the second degree, if the offense is
7 committed under Subsection (a)(3).

8 (d) An offense under Subsection (a)(2) or (3) is increased
9 to the next higher category of offense if it is shown at the trial of
10 the offense that, at the time of the commission of the offense, the
11 actor was:

12 (1) a peace officer as defined by Article 2.12, Code of
13 Criminal Procedure, or other law;

14 (2) a corrections officer employed by a secure
15 correctional facility;

16 (3) a health care services provider as defined by
17 Section 22.011(c)(3);

18 (4) a mental health services provider as defined by
19 Section 22.011(c)(4); or

20 (5) an employee of a facility as defined by Section
21 22.011(c)(5).

22 (e) It is an affirmative defense to prosecution under
23 Subsection (a)(3) that:

24 (1) the actor was not more than three years older than
25 the victim and at the time of the offense:

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

1 (B) was not a person who under Chapter 62, Code of
2 Criminal Procedure, had a reportable conviction or adjudication for
3 an offense under this section; and

4 (2) the victim:

5 (A) was a child of 14 years of age or older; and

6 (B) was not a person whom the actor was
7 prohibited from marrying or purporting to marry or with whom the
8 actor was prohibited from living under the appearance of being
9 married under Section 25.01.

10 SECTION 2. Section 3.03(b), Penal Code, is amended to read
11 as follows:

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

16 (1) an offense:

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

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

25 (2) an offense:

26 (A) under Section 21.11, 22.011, 22.021,
27 22.03(a)(3), 25.02, or 43.25 committed against a victim younger

1 than 17 years of age at the time of the commission of the offense
2 regardless of whether the accused is convicted of violations of the
3 same section more than once or is convicted of violations of more
4 than one section; or

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

12 (3) an offense:

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

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

21 SECTION 3. Section 12.42(c)(2), Penal Code, is amended to
22 read as follows:

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

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

27 (i) under Section 22.021 or 22.011[~~Penal~~

1 ~~Code~~];

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

5 (iii) under Section 30.02 [~~Penal Code~~],
6 punishable under Subsection (d) of that section, if the defendant
7 committed the offense with the intent to commit a felony described
8 by Subparagraph (i) or (ii) or a felony under Section 21.11 or
9 22.03(a)(2) or (3) [~~22.011, Penal Code~~]; and

10 (B) the defendant has been previously convicted
11 of an offense:

12 (i) under Section 43.25 or 43.26 [~~Penal~~
13 ~~Code~~] or an offense under Section 43.23 [~~Penal Code~~] punishable
14 under Subsection (h) of that section;

15 (ii) under Section 21.11, 22.011, 22.021,
16 22.03(a)(2) or (3), or 25.02 [~~Penal Code~~];

17 (iii) under Section 20.04(a)(4) [~~Penal~~
18 ~~Code~~], if the defendant committed the offense with the intent to
19 violate or abuse the victim sexually;

20 (iv) under Section 30.02 [~~Penal Code~~],
21 punishable under Subsection (d) of that section, if the defendant
22 committed the offense with the intent to commit a felony described
23 by Subparagraph (ii) or (iii); or

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

27 SECTION 4. Section 15.031(b), Penal Code, is amended to

1 read as follows:

2 (b) A person commits an offense if, with intent that an
3 offense under Section 21.11, 22.011, 22.021, 22.03(a)(2) or (3), or
4 43.25 be committed, the person by any means requests, commands, or
5 attempts to induce a minor or another whom the person believes to be
6 a minor to engage in specific conduct that, under the circumstances
7 surrounding the actor's conduct as the actor believes them to be,
8 would constitute an offense under one of those sections or would
9 make the minor or other believed by the person to be a minor a party
10 to the commission of an offense under one of those sections.

11 SECTION 5. Section 22.06, Penal Code, is amended to read as
12 follows:

13 Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT. The
14 victim's effective consent or the actor's reasonable belief that
15 the victim consented to the actor's conduct is a defense to
16 prosecution under Section 22.01 (Assault), 22.02 (Aggravated
17 Assault), 22.03(a)(1) (Assault with Bodily Fluids), or 22.05
18 (Deadly Conduct) if:

19 (1) the conduct did not threaten or inflict serious
20 bodily injury; or

21 (2) the victim knew the conduct was a risk of:

22 (A) his occupation;

23 (B) recognized medical treatment; or

24 (C) a scientific experiment conducted by
25 recognized methods.

26 SECTION 6. Article 21.31(a), Code of Criminal Procedure, is
27 amended to read as follows:

1 (a) A person who is indicted for or who waives indictment
2 for an offense under Section 21.11(a)(1), 22.011, [~~or~~] 22.021, or
3 22.03(a)(2) or (3), Penal Code, shall, at the direction of the
4 court, undergo a medical procedure or test designed to show or help
5 show whether the person has a sexually transmitted disease or has
6 acquired immune deficiency syndrome (AIDS) or human
7 immunodeficiency virus (HIV) infection, antibodies to HIV, or
8 infection with any other probable causative agent of AIDS. The
9 court may direct the person to undergo the procedure or test on its
10 own motion or on the request of the victim of the alleged offense.
11 If the person refuses to submit voluntarily to the procedure or
12 test, the court shall require the person to submit to the procedure
13 or test. The court may require a defendant previously required
14 under this article to undergo a medical procedure or test on
15 indictment for an offense to undergo a subsequent medical procedure
16 or test following conviction of the offense. The person performing
17 the procedure or test shall make the test results available to the
18 local health authority, and the local health authority shall be
19 required to make the notification of the test result to the victim
20 of the alleged offense and to the defendant.

21 SECTION 7. Section 1, Article 38.071, Code of Criminal
22 Procedure, is amended to read as follows:

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

- 1 (1) Section 19.02 (Murder);
- 2 (2) Section 19.03 (Capital Murder);
- 3 (3) Section 19.04 (Manslaughter);
- 4 (4) Section 20.04 (Aggravated Kidnapping);
- 5 (5) Section 21.11 (Indecency with a Child);
- 6 (6) Section 22.011 (Sexual Assault);
- 7 (7) Section 22.02 (Aggravated Assault);
- 8 (8) Section 22.021 (Aggravated Sexual Assault);
- 9 (9) Section 22.03(a)(3) (Assault with Bodily Fluids);
- 10 (10) Section 22.04(e) (Injury to a Child, Elderly
- 11 Individual, or Disabled Individual);
- 12 (11) [~~(10)~~] Section 22.04(f) (Injury to a Child,
- 13 Elderly Individual, or Disabled Individual), if the conduct is
- 14 committed intentionally or knowingly;
- 15 (12) [~~(11)~~] Section 25.02 (Prohibited Sexual
- 16 Conduct);
- 17 (13) [~~(12)~~] Section 29.03 (Aggravated Robbery); or
- 18 (14) [~~(13)~~] Section 43.25 (Sexual Performance by a
- 19 Child).

20 SECTION 8. Section 3g(a), Article 42.12, Code of Criminal
21 Procedure, is amended to read as follows:

22 (a) The provisions of Section 3 of this article do not
23 apply:

24 (1) to a defendant adjudged guilty of an offense
25 under:

- 26 (A) Section 19.02, Penal Code (Murder);
- 27 (B) Section 19.03, Penal Code (Capital murder);

1 (C) Section 21.11(a)(1), Penal Code (Indecency
2 with a child);

3 (D) Section 20.04, Penal Code (Aggravated
4 kidnapping);

5 (E) Section 22.021, Penal Code (Aggravated
6 sexual assault);

7 (F) Section 29.03, Penal Code (Aggravated
8 robbery);

9 (G) Chapter 481, Health and Safety Code, for
10 which punishment is increased under:

11 (i) Section 481.140, Health and Safety
12 Code; or

13 (ii) Section 481.134(c), (d), (e), or (f),
14 Health and Safety Code, if it is shown that the defendant has been
15 previously convicted of an offense for which punishment was
16 increased under any of those subsections; ~~or~~

17 (H) Section 22.011, Penal Code (Sexual assault);
18 or

19 (I) Section 22.03(a)(2) or (3), Penal Code
20 (Assault with bodily fluids); or

21 (2) to a defendant when it is shown that a deadly
22 weapon as defined in Section 1.07, Penal Code, was used or exhibited
23 during the commission of a felony offense or during immediate
24 flight therefrom, and that the defendant used or exhibited the
25 deadly weapon or was a party to the offense and knew that a deadly
26 weapon would be used or exhibited. On an affirmative finding under
27 this subdivision, the trial court shall enter the finding in the

1 judgment of the court. On an affirmative finding that the deadly
2 weapon was a firearm, the court shall enter that finding in its
3 judgment.

4 SECTION 9. Section 5(d), Article 42.12, Code of Criminal
5 Procedure, is amended to read as follows:

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

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

9 (A) under Section 49.04, 49.05, 49.06, 49.07, or
10 49.08, Penal Code; or

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

16 (2) the defendant:

17 (A) is charged with an offense under Section
18 21.11, 22.011, ~~or~~ 22.021, or 22.03(a)(2) or (3), Penal Code,
19 regardless of the age of the victim, or a felony described by
20 Section 13B(b) of this article; and

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

24 SECTION 10. Section 13B(b), Article 42.12, Code of Criminal
25 Procedure, is amended to read as follows:

26 (b) This section applies to a defendant placed on community
27 supervision for an offense:

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

2 (2) under Section 21.08, 21.11, 22.011, 22.021,
3 22.03(a)(3), or 25.02, Penal Code;

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

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

11 SECTION 11. (a) Article 62.001(5), Code of Criminal
12 Procedure, as renumbered from former Article 62.01(5), Code of
13 Criminal Procedure, and amended by Chapter 1008, Acts of the 79th
14 Legislature, Regular Session, 2005, is reenacted and amended to
15 conform to an amendment to former Article 62.01(5) by Chapter 1273,
16 Acts of the 79th Legislature, Regular Session, 2005, and is further
17 amended to read as follows:

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

23 (A) a violation of Section 21.11 (Indecency with
24 a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual
25 assault), 22.03(a)(2) or (3) (Assault with bodily fluids), or 25.02
26 (Prohibited sexual conduct), Penal Code;

27 (B) a violation of Section 43.05 (Compelling

1 prostitution), 43.25 (Sexual performance by a child), or 43.26
2 (Possession or promotion of child pornography), Penal Code;

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

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

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

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

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

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

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

26 (H) a violation of the laws of another state,
27 federal law, the laws of a foreign country, or the Uniform Code of

1 Military Justice for or based on the violation of an offense
2 containing elements that are substantially similar to the elements
3 of an offense listed under Paragraph (A), (B), (C), (D), (E), [~~or~~]
4 (G), or (J), but not if the violation results in a deferred
5 adjudication; [~~or~~]

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

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

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

16 SECTION 12. Article 62.001(6), Code of Criminal Procedure,
17 is amended to read as follows:

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

20 (A) an offense under Section 21.11(a)(1)
21 (Indecency with a child), 22.011 (Sexual assault), [~~or~~] 22.021
22 (Aggravated sexual assault), or 22.03(a)(2) or (3) (Assault with
23 bodily fluids), Penal Code;

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

26 (C) an offense under Section 20.04(a)(4)
27 (Aggravated kidnapping), Penal Code, if the defendant committed the

1 offense with intent to violate or abuse the victim sexually;

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

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

12 SECTION 13. Article 102.0186(a), Code of Criminal
13 Procedure, is amended to read as follows:

14 (a) A person convicted of an offense under Section 21.11,
15 22.011(a)(2), 22.021(a)(1)(B), 22.03(a)(3), 43.25, 43.251, or
16 43.26, Penal Code, shall pay \$100 on conviction of the offense.

17 SECTION 14. Section 25.0341(a), Education Code, as added by
18 Chapter 997, Acts of the 79th Legislature, Regular Session, 2005,
19 is amended to read as follows:

20 (a) This section applies only to:

21 (1) a student:

22 (A) who has been convicted of or placed on
23 deferred adjudication for the offense of sexual assault under
24 Section 22.011, Penal Code, ~~[or]~~ aggravated sexual assault under
25 Section 22.021, Penal Code, or assault with bodily fluids under
26 Section 22.03(a)(2) or (3), Penal Code, committed against another
27 student who, at the time the offense occurred, was assigned to the

1 same campus as the student convicted or placed on deferred
2 adjudication;

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

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

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

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

14 SECTION 15. Section 37.007(a), Education Code, is amended
15 to read as follows:

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

19 (1) uses, exhibits, or possesses:

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

22 (B) an illegal knife as defined by Section
23 46.01(6), Penal Code, or by local policy;

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

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

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

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

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

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

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

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

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

17 (G) manslaughter under Section 19.04, Penal
18 Code; ~~or~~

19 (H) criminally negligent homicide under Section
20 19.05, Penal Code; or

21 (I) assault with bodily fluids under Section
22 22.03(a)(2) or (3), Penal Code; or

23 (3) engages in conduct specified by Section
24 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

25 SECTION 16. Section 33.009, Family Code, is amended to read
26 as follows:

27 Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A

1 court or the guardian ad litem or attorney ad litem for the minor
2 shall report conduct reasonably believed to violate Section 22.011,
3 22.021, 22.03(a)(3), or 25.02, Penal Code, based on information
4 obtained during a confidential court proceeding held under this
5 chapter to:

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

15 SECTION 17. Section 33.010, Family Code, is amended to read
16 as follows:

17 Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other
18 law, information obtained by the Department of Family and
19 Protective [~~and Regulatory~~] Services or another entity under
20 Section 33.008 or 33.009 is confidential except to the extent
21 necessary to prove a violation of Section 22.011, 22.021,
22 22.03(a)(3), or 25.02, Penal Code.

23 SECTION 18. Section 156.104, Family Code, is amended to
24 read as follows:

25 Sec. 156.104. MODIFICATION OF ORDER ON CONVICTION FOR CHILD
26 ABUSE; PENALTY. (a) Except as provided by Section 156.1045, the
27 conviction of a conservator, or an order deferring adjudication

1 with regard to the conservator, for an offense involving the abuse
2 of a child under Section 21.11, 22.011, [~~or~~] 22.021, or
3 22.03(a)(3), Penal Code, is a material and substantial change of
4 circumstances sufficient to justify a temporary order and
5 modification of an existing court order or portion of a decree that
6 provides for the appointment of a conservator or that sets the terms
7 and conditions of conservatorship or for the possession of or
8 access to a child.

9 (b) A person commits an offense if the person files a suit to
10 modify an order or portion of a decree based on the grounds
11 permitted under Subsection (a) and the person knows that the person
12 against whom the motion is filed has not been convicted of an
13 offense, or received deferred adjudication for an offense, under
14 Section 21.11, 22.011, [~~or~~] 22.021, or 22.03(a)(3), Penal Code. An
15 offense under this subsection is a Class B misdemeanor.

16 SECTION 19. Section 161.001, Family Code, is amended to
17 read as follows:

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

21 (1) that the parent has:

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

25 (B) voluntarily left the child alone or in the
26 possession of another not the parent without expressing an intent
27 to return, without providing for the adequate support of the child,

1 and remained away for a period of at least three months;

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

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

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

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

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

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

25 (I) contumaciously refused to submit to a
26 reasonable and lawful order of a court under Subchapter D, Chapter
27 261;

1 (J) been the major cause of:

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

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

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

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

17 (i) Section 19.02 (murder);

18 (ii) Section 19.03 (capital murder);

19 (iii) Section 19.04 (manslaughter);

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

22 (v) Section 22.01 (assault);

23 (vi) Section 22.011 (sexual assault);

24 (vii) Section 22.02 (aggravated assault);

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

27 (ix) Section 22.03(a)(3) (assault with

1 bodily fluids);

2 (x) Section 22.04 (injury to a child, elderly
3 individual, or disabled individual);

4 (xi) [~~(x)~~] Section 22.041 (abandoning or
5 endangering child);

6 (xii) [~~(xii)~~] Section 25.02 (prohibited
7 sexual conduct);

8 (xiii) [~~(xiii)~~] Section 43.25 (sexual
9 performance by a child); and

10 (xiv) [~~(xiv)~~] Section 43.26 (possession or
11 promotion of child pornography);

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

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

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

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

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

26 (O) failed to comply with the provisions of a
27 court order that specifically established the actions necessary for

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

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

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

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

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

16 (i) conviction of an offense; and

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

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

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

27 (T) been convicted of the murder of the other

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

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

8 SECTION 20. Section 161.007, Family Code, is amended to
9 read as follows:

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

14 (1) the parent has been convicted of an offense
15 committed under Section 22.011, 22.021, 22.03(a)(3), or 25.02,
16 Penal Code;

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

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

21 SECTION 21. Section 261.001(1), Family Code, is amended to
22 read as follows:

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

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

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

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

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

15 (E) sexual conduct harmful to a child's mental,
16 emotional, or physical welfare, including conduct that constitutes
17 the offense of indecency with a child under Section 21.11, Penal
18 Code, sexual assault under Section 22.011, Penal Code, ~~[or]~~
19 aggravated sexual assault under Section 22.021, Penal Code, or
20 assault with bodily fluids under Section 22.03(a)(3), Penal Code;

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

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

25 (H) causing, permitting, encouraging, engaging
26 in, or allowing the photographing, filming, or depicting of the
27 child if the person knew or should have known that the resulting

1 photograph, film, or depiction of the child is obscene as defined by
2 Section 43.21, Penal Code, or pornographic;

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

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

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

13 SECTION 22. Section 262.2015(b), Family Code, is amended to
14 read as follows:

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

17 (1) the parent abandoned the child without
18 identification or a means for identifying the child;

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

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

25 (A) Section 19.02 (murder);

26 (B) Section 19.03 (capital murder);

27 (C) Section 19.04 (manslaughter);

1 (D) Section 21.11 (indecenty with a child);
2 (E) Section 22.011 (sexual assault);
3 (F) Section 22.02 (aggravated assault);
4 (G) Section 22.021 (aggravated sexual assault);
5 (H) Section 22.03(a)(3) (assault with bodily
6 fluids);

7 (I) Section 22.04 (injury to a child, elderly
8 individual, or disabled individual);

9 (J) [~~(I)~~] Section 22.041 (abandoning or
10 endangering child);

11 (K) [~~(J)~~] Section 25.02 (prohibited sexual
12 conduct);

13 (L) [~~(K)~~] Section 43.25 (sexual performance by a
14 child); or

15 (M) [~~(L)~~] Section 43.26 (possession or promotion
16 of child pornography);

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

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

25 (6) the parent has been convicted for:

26 (A) the murder of another child of the parent and
27 the offense would have been an offense under 18 U.S.C. Section

1 1111(a) if the offense had occurred in the special maritime or
2 territorial jurisdiction of the United States;

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

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

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

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

14 SECTION 23. Section 411.1471(a), Government Code, is
15 amended to read as follows:

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

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

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

21 (B) Section 21.11;

22 (C) Section 22.011;

23 (D) Section 22.021;

24 (E) Section 22.03(a)(2) or (3);

25 (F) Section 25.02;

26 (G) [~~F~~] Section 30.02(d);

27 (H) [~~G~~] Section 43.05;

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

2 (J) [~~(I)~~] Section 43.26;

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

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

9 SECTION 24. Section 420.003(4), Government Code, is amended
10 to read as follows:

11 (4) "Sexual assault" means any act or attempted act as
12 described by Section 21.11, 22.011, 22.021, 22.03(a)(2) or (3), or
13 25.02, Penal Code.

14 SECTION 25. Section 501.061(a), Government Code, is amended
15 to read as follows:

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

18 (1) the inmate has been convicted of an offense under
19 Section 21.11, 22.011(a)(2), [~~or~~] 22.021(a)(2)(B), or 22.03(a)(3),
20 Penal Code, and has previously been convicted under one or more of
21 those sections;

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

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

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

27 (5) a psychiatrist and a psychologist who are

1 appointed by the department and have experience in the treatment of
2 sex offenders:

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

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

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

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

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

14 SECTION 26. Section 508.046, Government Code, is amended to
15 read as follows:

16 Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on
17 parole an inmate who was convicted of an offense under Section
18 21.11(a)(1), ~~or~~ 22.021, or 22.03(a)(3), Penal Code, or who is
19 required under Section 508.145(c) to serve 35 calendar years before
20 becoming eligible for release on parole, all members of the board
21 must vote on the release on parole of the inmate, and at least
22 two-thirds of the members must vote in favor of the release on
23 parole. A member of the board may not vote on the release unless the
24 member first receives a copy of a written report from the department
25 on the probability that the inmate would commit an offense after
26 being released on parole.

27 SECTION 27. Section 508.145(d), Government Code, is amended

1 to read as follows:

2 (d) An inmate serving a sentence for an offense described by
3 Section 3g(a)(1)(A), (C), (D), (E), (F), (G), [~~or~~] (H), or (I),
4 Article 42.12, Code of Criminal Procedure, or for an offense for
5 which the judgment contains an affirmative finding under Section
6 3g(a)(2) of that article, is not eligible for release on parole
7 until the inmate's actual calendar time served, without
8 consideration of good conduct time, equals one-half of the sentence
9 or 30 calendar years, whichever is less, but in no event is the
10 inmate eligible for release on parole in less than two calendar
11 years.

12 SECTION 28. Section 508.149(a), Government Code, is amended
13 to read as follows:

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

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

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

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

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

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

27 (6) a [~~second degree~~] felony under Section 22.011,

1 Penal Code;

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

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

6 (9) a felony under Section 22.03, Penal Code;

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

9 (11) [~~(10)~~] a first degree felony under Section 28.02,
10 Penal Code;

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

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

15 (14) [~~(13)~~] a first degree felony under Section 30.02,
16 Penal Code; or

17 (15) [~~(14)~~] a felony for which the punishment is
18 increased under Section 481.134 or Section 481.140, Health and
19 Safety Code.

20 SECTION 29. Section 508.187(a), Government Code, is amended
21 to read as follows:

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

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

25 (2) Section 21.11, 22.011, 22.021, 22.03(a)(3), or
26 25.02, Penal Code;

27 (3) Section 20.04(a)(4), Penal Code, if the releasee

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

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

7 SECTION 30. Section 508.189(a), Government Code, is amended
8 to read as follows:

9 (a) A parole panel shall require as a condition of parole or
10 mandatory supervision that a releasee convicted of an offense under
11 Section 21.08, 21.11, 22.011, 22.021, 22.03(a)(2) or (3), 25.02,
12 43.25, or 43.26, Penal Code, pay to the division a parole
13 supervision fee of \$5 each month during the period of parole
14 supervision.

15 SECTION 31. Section 242.126(c), Health and Safety Code, is
16 amended to read as follows:

17 (c) The agency shall begin the investigation:

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

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

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

26 (C) a resident has been hospitalized or been
27 treated in an emergency room because of conduct alleged in the

1 report of abuse or neglect or other complaint;

2 (D) a resident has been a victim of any act or
3 attempted act described by Section 21.11, 22.011, [~~or~~] 22.021, or
4 22.03(a)(2) or (3), Penal Code; or

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

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

13 SECTION 32. Section 250.006(a), Health and Safety Code, is
14 amended to read as follows:

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

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

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

23 (3) an offense under Section 21.11, Penal Code
24 (indecent with a child);

25 (4) an offense under Section 22.011, Penal Code
26 (sexual assault);

27 (5) an offense under Section 22.02, Penal Code

1 (aggravated assault);

2 (6) an offense under Section 22.03(a)(2) or (3), Penal
3 Code (assault with bodily fluids);

4 (7) an offense under Section 22.04, Penal Code (injury
5 to a child, elderly individual, or disabled individual);

6 (8) [~~(7)~~] an offense under Section 22.041, Penal Code
7 (abandoning or endangering child);

8 (9) [~~(8)~~] an offense under Section 22.08, Penal Code
9 (aiding suicide);

10 (10) [~~(9)~~] an offense under Section 25.031, Penal Code
11 (agreement to abduct from custody);

12 (11) [~~(10)~~] an offense under Section 25.08, Penal Code
13 (sale or purchase of a child);

14 (12) [~~(11)~~] an offense under Section 28.02, Penal Code
15 (arson);

16 (13) [~~(12)~~] an offense under Section 29.02, Penal Code
17 (robbery);

18 (14) [~~(13)~~] an offense under Section 29.03, Penal Code
19 (aggravated robbery); or

20 (15) [~~(14)~~] a conviction under the laws of another
21 state, federal law, or the Uniform Code of Military Justice for an
22 offense containing elements that are substantially similar to the
23 elements of an offense listed under Subdivisions (1)-(14)
24 [~~Subdivisions (1)-(13)~~].

25 SECTION 33. Section 841.002(8), Health and Safety Code, is
26 amended to read as follows:

27 (8) "Sexually violent offense" means:

1 (A) an offense under Section 21.11(a)(1),
2 22.011, ~~[or]~~ 22.021, or 22.03(a)(2) or (3), Penal Code;

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

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

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

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

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

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

27 SECTION 34. (a) Except as provided by Subsection (b) of this

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

9 (b) The change in law made by this Act to Section 841.002,
10 Health and Safety Code, applies only to an individual who on or
11 after the effective date of this Act is serving a sentence in the
12 Texas Department of Criminal Justice or is committed to the
13 Department of State Health Services or the Department of Aging and
14 Disability Services for an offense committed before, on, or after
15 the effective date of this Act.

16 SECTION 35. This Act takes effect September 1, 2007.