

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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H.B. No. 8

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution, punishment, and supervision of certain  
sex offenders and to certain crimes involving sex offenders.

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. This Act shall be known as the Jessica  
Lunsford Act.

SECTION 1.02. 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" means a person younger than  
14 years of age.

(b) A person commits an offense if:

(1) during a period that is 30 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           (1) aggravated kidnapping under Section 20.04(a)(4)  
2 if the defendant committed the offense with the intent to violate or  
3 abuse the victim sexually;

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

5           (3) sexual assault under Section 22.011;

6           (4) aggravated sexual assault under Section 22.021;

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

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

12           (d) If a jury is the trier of fact, members of the jury are  
13 not required to agree unanimously on which specific offenses listed  
14 in Subsection (c) were committed by the defendant or when those  
15 offenses were committed. The jury must agree unanimously that the  
16 defendant, during a period that is 30 or more days in duration,  
17 committed an offense listed in Subsection (c) more than one time or  
18 committed 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) It is an affirmative defense to prosecution under this  
4 section that the actor:

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

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

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

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

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

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

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

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

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

1 punished for a capital felony.

2 SECTION 1.03. Chapter 37, Code of Criminal Procedure, is  
3 amended by adding Article 37.072 to read as follows:

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

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

9 Sec. 2. (a)(1) If a defendant is tried for an offense  
10 punishable under Section 21.02(i), Penal Code, in which the state  
11 seeks the death penalty, on a finding that the defendant is guilty  
12 of a capital offense, the court shall conduct a separate sentencing  
13 proceeding to determine whether the defendant shall be sentenced to  
14 death or life imprisonment without parole. The proceeding shall be  
15 conducted in the trial court and, except as provided by Article  
16 44.29(d) of this code, before the trial jury as soon as practicable.  
17 In the proceeding, evidence may be presented by the state and the  
18 defendant or the defendant's counsel as to any matter that the court  
19 considers relevant to sentence, including evidence of the  
20 defendant's background or character or the circumstances of the  
21 offense that mitigates against the imposition of the death penalty.  
22 This subdivision may not be construed to authorize the introduction  
23 of any evidence secured in violation of the Constitution of the  
24 United States or of the State of Texas. The state and the defendant  
25 or the defendant's counsel shall be permitted to present argument  
26 for or against sentence of death. The introduction of evidence of  
27 extraneous conduct is governed by the notice requirements of

1 Section 3(g), Article 37.07. The court, the attorney representing  
2 the state, the defendant, or the defendant's counsel may not inform  
3 a juror or a prospective juror of the effect of a failure of a jury  
4 to agree on issues submitted under Subsection (b) or (e).

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

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

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

14 (2) in cases in which the jury charge at the guilt or  
15 innocence stage permitted the jury to find the defendant guilty as a  
16 party under Sections 7.01 and 7.02, Penal Code, whether the  
17 defendant actually engaged in the conduct prohibited by Section  
18 21.02, Penal Code, or did not actually engage in the conduct  
19 prohibited by that section but intended that the offense be  
20 committed against the victim or another intended victim.

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

25 (d) The court shall charge the jury that:

26 (1) in deliberating on the issues submitted under  
27 Subsection (b) of this section, it shall consider all evidence

1 admitted at the guilt or innocence stage and the punishment stage,  
2 including evidence of the defendant's background or character or  
3 the circumstances of the offense that militates for or mitigates  
4 against the imposition of the death penalty;

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

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

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

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

21 (2) The court shall:

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

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

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

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

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

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

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

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

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

26           SECTION 1.04. Article 12.01, Code of Criminal Procedure, is  
27 amended to read as follows:

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

(1) no limitation:

(A) murder and manslaughter;

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

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

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

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

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

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

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

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

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

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

(F) arson;

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

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

(B) securing execution of document by deception; or

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

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

(A) theft or [~~burglary~~] robbery;

(B) except as provided by Subdivision (5), kidnapping or burglary;

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

(D) abandoning or endangering a child; or

(E) insurance fraud;

(5) except as provided by Subdivision (1), 20 years

1 from the 18th birthday of the victim of one of the following  
2 offenses, if the investigation of the offense shows that the victim  
3 is younger than 17 years of age at the time the offense is  
4 committed:

5 (A) sexual performance by a child under Section  
6 43.25, Penal Code;

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

10 (C) burglary under Section 30.02, Penal Code, if  
11 the offense is punishable under Subsection (d) of that section and  
12 the defendant committed the offense with the intent to commit an  
13 offense described by Subdivision (1)(B) or (D) of this article or  
14 Paragraph (B) of this subdivision;

15 (6) except as provided by Subdivision (1), for  
16 continuous sexual abuse of young child or children under Section  
17 21.02, Penal Code, 20 years from the 18th birthday of:

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

20 (B) the youngest victim of the offense, if the  
21 offense is alleged to have been committed against more than one  
22 victim ~~[ten years from the 18th birthday of the victim of the~~  
23 ~~offense.]~~

24 ~~[(A) indecency with a child under Section~~  
25 ~~21.11(a)(1) or (2), Penal Code, or~~

26 ~~[(B) except as provided by Subdivision (1),~~  
27 ~~sexual assault under Section 22.011(a)(2), Penal Code, or~~

~~aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code]; or~~

(7) ~~[(6)]~~ three years from the date of the commission of the offense: all other felonies.

SECTION 1.05. Section 508.145, Government Code, is amended by adding Subsection (c-1) to read as follows:

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

SECTION 1.06. Section 508.149(a), Government Code, is amended to read as follows:

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

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

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

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

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

(5) an offense ~~[a second degree felony or a third~~

1 ~~degree felony~~] under Section 21.11, Penal Code;

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

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

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

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

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

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

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

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

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

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

22 ARTICLE 2. CONFORMING AMENDMENTS

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

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

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

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

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

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

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

- 20                   (A) Section 19.02 (murder);  
21                   (B) Section 19.03 (capital murder);  
22                   (C) Section 20.04 (aggravated kidnapping);  
23                   (D) Section 22.02 (aggravated assault);  
24                   (E) Section 22.011 (sexual assault);  
25                   (F) Section 22.021 (aggravated sexual assault);  
26                   (G) Section 22.04 (injury to a child, elderly  
27 individual, or disabled individual);

(H) Section 32.21 (forgery);

(I) Section 32.43 (commercial bribery);

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

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

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

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

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

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

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

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

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

individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault); ~~[or]~~

(15) Section 49.08 (intoxication manslaughter); or

(16) Section 21.02 (continuous sexual abuse of young child or children).

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

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

(1) discharge of a firearm in a public place as prohibited by the Penal Code;

(2) reckless discharge of a firearm as prohibited by the Penal Code;

(3) engaging in organized criminal activity as a

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

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

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

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

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

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

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

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

19 (11) aggravated sexual assault as described by Section  
20 22.021, Penal Code;

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

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

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

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

1    [~~or~~]

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

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

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

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

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

15            (a) If a subsequent application for a writ of habeas corpus  
16 is filed after filing an initial application, a court may not  
17 consider the merits of or grant relief based on the subsequent  
18 application unless the application contains sufficient specific  
19 facts establishing that:

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

26                    (2) by a preponderance of the evidence, but for a  
27 violation of the United States Constitution no rational juror could

1 have found the applicant guilty beyond a reasonable doubt; or

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

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

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

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

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

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

19 (A) Section 19.03 (Capital Murder);

20 (B) Section 20.04 (Aggravated Kidnapping);

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

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

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

27 (F) Section 29.03 (Aggravated Robbery);

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

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

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

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

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

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

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

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.03 (kidnapping);

(4) Section 20.04 (aggravated kidnapping);

(5) Section 21.11 (indecent with a child);

(6) Section 22.01(a)(1) (assault);

(7) Section 22.011 (sexual assault);

(8) Section 22.02 (aggravated assault);

- (9) Section 22.021 (aggravated sexual assault);
- (10) Section 22.04 (injury to a child, elderly individual, or disabled individual); ~~[or]~~
- (11) Section 29.03 (aggravated robbery); or
- (12) Section 21.02 (continuous sexual abuse of young child or children).

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

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

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

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

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

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

1 child or children as prohibited by Section 21.02, Penal Code.

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

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

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

26 Sec. 3. Except for the review of a death sentence under  
27 Section 2(h), Article 37.071, or under Section 2(h), Article 37.072

1    ~~[37.071(h) of this code]~~, an appeal taken in a cause returned to the  
2    original county under this article must be docketed in the  
3    appellate district in which the county of original venue is  
4    located.

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

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

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

23           (a) In the penalty phase of the trial of a felony case in  
24   which the punishment is to be assessed by the jury rather than the  
25   court, if the offense of which the jury has found the defendant  
26   guilty is listed in Section 3g(a)(1), Article 42.12, of this code or  
27   if the judgment contains an affirmative finding under Section

1 3g(a)(2), Article 42.12, of this code, unless the defendant has  
2 been convicted of an offense under Section 21.02, Penal Code, or a  
3 capital felony, the court shall charge the jury in writing as  
4 follows:

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

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

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

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

1 authorities.

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

7 (b) In the penalty phase of the trial of a felony case in  
8 which the punishment is to be assessed by the jury rather than the  
9 court, if the offense is punishable as a felony of the first degree,  
10 if a prior conviction has been alleged for enhancement of  
11 punishment as provided by Section 12.42(b), (c), or (d), Penal  
12 Code, or if the offense is a felony not designated as a capital  
13 felony or a felony of the first, second, or third degree and the  
14 maximum term of imprisonment that may be imposed for the offense is  
15 longer than 60 years, unless the offense of which the jury has found  
16 the defendant guilty is an offense under Section 21.02, Penal Code,  
17 or is listed in Section 3g(a)(1), Article 42.12, of this code or the  
18 judgment contains an affirmative finding under Section 3g(a)(2),  
19 Article 42.12, of this code, the court shall charge the jury in  
20 writing as follows:

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

1 any good conduct time earned by the prisoner.

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

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

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

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

21 (e) In the penalty phase of the trial of an offense under  
22 Section 21.02, Penal Code, other than an offense punishable under  
23 Subsection (i) of that section, in which the punishment is to be  
24 assessed by the jury rather than the court, if the jury finds the  
25 defendant guilty, the court shall charge the jury in writing as  
26 follows:

27 "Under the law applicable in this case, it is possible that

1 the length of time for which the defendant will be imprisoned might  
2 be reduced by the award of parole.

3 "Under the law applicable in this case, the defendant will  
4 not become eligible for parole until the actual time served,  
5 without consideration of good conduct time, equals one-half of the  
6 sentence imposed or 30 years, whichever is less. If the defendant  
7 is sentenced to a term of less than 50 years, the defendant must  
8 serve at least 25 years before the defendant is eligible for parole.  
9 Eligibility for parole does not guarantee that parole will be  
10 granted.

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

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

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

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

- 24 (1) Section 19.02 (Murder);  
25 (2) Section 19.03 (Capital Murder);  
26 (3) Section 19.04 (Manslaughter);  
27 (4) Section 20.04 (Aggravated Kidnapping);

- 1           (5) Section 21.11 (Indecency with a Child);  
2           (6) Section 22.011 (Sexual Assault);  
3           (7) Section 22.02 (Aggravated Assault);  
4           (8) Section 22.021 (Aggravated Sexual Assault);  
5           (9) Section 22.04(e) (Injury to a Child, Elderly  
6 Individual, or Disabled Individual);  
7           (10) Section 22.04(f) (Injury to a Child, Elderly  
8 Individual, or Disabled Individual), if the conduct is committed  
9 intentionally or knowingly;  
10          (11) Section 25.02 (Prohibited Sexual Conduct);  
11          (12) Section 29.03 (Aggravated Robbery); ~~[or]~~  
12          (13) Section 43.25 (Sexual Performance by a Child); or  
13          (14) Section 21.02 (Continuous Sexual Abuse of Young  
14 Child or Children).

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

17           Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the  
18 trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or  
19 43.25, Penal Code, the judge shall make an affirmative finding of  
20 fact and enter the affirmative finding in the judgment in the case  
21 if the judge determines that:

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

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

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

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

(1) the defendant is charged with an offense:

(A) under Section 21.02, Penal Code;

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

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

(2) the defendant:

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

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

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

(a) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the ~~[institutional division of the]~~ Texas Department of Criminal Justice for life without parole if the court finds that there is legally insufficient

evidence to support an affirmative answer to an issue submitted to the jury under Section 2(b), Article 37.071, or Section 2(b), Article 37.072.

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

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

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

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

1 court in other trials before the court for the offense of which the  
2 defendant was convicted. At the new punishment hearing, the court  
3 shall permit both the state and the defendant to introduce evidence  
4 as permitted by Article 37.072.

5 SECTION 2.21. 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 2.22. 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 2.23. (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

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

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

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

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

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

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

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

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

(B) an offense under Section 43.25 (Sexual

performance by a child), Penal Code;

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

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

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

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

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

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

(a) This section applies only to:

(1) a student:

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

1 sexual assault under Section 22.011, Penal Code, or aggravated  
2 sexual assault under Section 22.021, Penal Code, committed against  
3 another student who, at the time the offense occurred, was assigned  
4 to the 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 2.27. 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.

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

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

(1) any local or state law enforcement agency;

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

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

(4) an appropriate agency designated by the court.

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

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

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

Sec. 156.104. MODIFICATION OF ORDER ON CONVICTION FOR CHILD

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

12 (b) A person commits an offense if the person files a suit to  
13 modify an order or portion of a decree based on the grounds  
14 permitted under Subsection (a) and the person knows that the person  
15 against whom the motion is filed has not been convicted of an  
16 offense under Section 21.02, Penal Code, or convicted of, or  
17 received deferred adjudication for an offense, under Section 21.11,  
18 22.011, or 22.021, Penal Code. An offense under this subsection is  
19 a Class B misdemeanor.

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

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

25 (1) that the parent has:

26 (A) voluntarily left the child alone or in the  
27 possession of another not the parent and expressed an intent not to

1 return;

2 (B) voluntarily left the child alone or in the  
3 possession of another not the parent without expressing an intent  
4 to return, without providing for the adequate support of the child,  
5 and remained away for a period of at least three months;

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

9 (D) knowingly placed or knowingly allowed the  
10 child to remain in conditions or surroundings which endanger the  
11 physical or emotional well-being of the child;

12 (E) engaged in conduct or knowingly placed the  
13 child with persons who engaged in conduct which endangers the  
14 physical or emotional well-being of the child;

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

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

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

1 child since the birth;

2 (I) contumaciously refused to submit to a  
3 reasonable and lawful order of a court under Subchapter D, Chapter  
4 261;

5 (J) been the major cause of:

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

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

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

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

21 (i) Section 19.02 (murder);

22 (ii) Section 19.03 (capital murder);

23 (iii) Section 19.04 (manslaughter);

24 (iv) Section 21.11 (indecent with a  
25 child);

26 (v) Section 22.01 (assault);

27 (vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);  
(viii) Section 22.021 (aggravated sexual assault);

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

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

(xi) Section 25.02 (prohibited sexual conduct);

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

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

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

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

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

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

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

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

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

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

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

15 (ii) after completion of a court-ordered  
16 substance abuse treatment program, continued to abuse a controlled  
17 substance;

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

20 (i) conviction of an offense; and

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

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

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

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

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

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

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

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

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

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

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

27           (1) "Abuse" includes the following acts or omissions

1 by a person:

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

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

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

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

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

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

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

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

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

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

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

18 SECTION 2.34. Section 262.2015(b), Family Code, is amended  
19 to read as follows:

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

22 (1) the parent abandoned the child without  
23 identification or a means for identifying the child;

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

27 (3) the parent has engaged in conduct against the

child that would constitute an offense under the following provisions of the Penal Code:

- (A) Section 19.02 (murder);
- (B) Section 19.03 (capital murder);
- (C) Section 19.04 (manslaughter);
- (D) Section 21.11 (indecent with a child);
- (E) Section 22.011 (sexual assault);
- (F) Section 22.02 (aggravated assault);
- (G) Section 22.021 (aggravated sexual assault);
- (H) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (I) Section 22.041 (abandoning or endangering child);
- (J) Section 25.02 (prohibited sexual conduct);
- (K) Section 43.25 (sexual performance by a child); ~~[or]~~
- (L) Section 43.26 (possession or promotion of child pornography); or
- (M) Section 21.02 (continuous sexual abuse of young child or children);

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

(5) the parent's parental rights with regard to another child have been involuntarily terminated based on a finding that the parent's conduct violated Section 161.001(1)(D) or (E) or

1 a substantially equivalent provision of another state's law;

2 (6) the parent has been convicted for:

3 (A) the murder of another child of the parent and  
4 the offense would have been an offense under 18 U.S.C. Section  
5 1111(a) if the offense had occurred in the special maritime or  
6 territorial jurisdiction of the United States;

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

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

13 (D) the felony assault of the child or another  
14 child of the parent that resulted in serious bodily injury to the  
15 child or another child of the parent; or

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

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

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

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

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

25 (B) Section 21.11;

26 (C) Section 22.011;

27 (D) Section 22.021;

- (E) Section 25.02;
- (F) Section 30.02(d);
- (G) Section 43.05;
- (H) Section 43.25; ~~[ex]~~
- (I) Section 43.26; or
- (J) Section 21.02;

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

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

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

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

SECTION 2.37. Section 499.027(b), Government Code, is amended to read as follows:

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

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

(2) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense

1 listed in one of the following sections of the Penal Code:

- 2 (A) Section 19.02 (murder);
- 3 (B) Section 19.03 (capital murder);
- 4 (C) Section 19.04 (manslaughter);
- 5 (D) Section 20.03 (kidnapping);
- 6 (E) Section 20.04 (aggravated kidnapping);
- 7 (F) Section 21.11 (indecent with a child);
- 8 (G) Section 22.011 (sexual assault);
- 9 (H) Section 22.02 (aggravated assault);
- 10 (I) Section 22.021 (aggravated sexual assault);
- 11 (J) Section 22.04 (injury to a child or an
- 12 elderly individual);
- 13 (K) Section 25.02 (prohibited sexual conduct);
- 14 (L) Section 25.08 (sale or purchase of a child);
- 15 (M) Section 28.02 (arson);
- 16 (N) Section 29.02 (robbery);
- 17 (O) Section 29.03 (aggravated robbery);
- 18 (P) Section 30.02 (burglary), if the offense is
- 19 punished as a first-degree felony under that section;
- 20 (Q) Section 43.04 (aggravated promotion of
- 21 prostitution);
- 22 (R) Section 43.05 (compelling prostitution);
- 23 (S) Section 43.24 (sale, distribution, or
- 24 display of harmful material to minor);
- 25 (T) Section 43.25 (sexual performance by a
- 26 child);
- 27 (U) Section 46.10 (deadly weapon in penal

institution);

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

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

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

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

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

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

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

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

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

(3) the inmate requests the procedure in writing;

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

1 inmate has been convicted;

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

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

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

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

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

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

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

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

1 released on parole.

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

4 (2-a) "Sexual assault" includes an offense under  
5 Section 21.02, Penal Code.

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

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

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

15 (2) has never had a conviction with a judgment that  
16 contains an affirmative finding under Section 3g(a)(2), Article  
17 42.12, Code of Criminal Procedure.

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

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

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

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

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

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

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

7           (a) A parole panel shall require as a condition of parole or  
8 mandatory supervision that a releasee convicted of an offense under  
9 Section 21.02, 21.08, 21.11, 22.011, 22.021, 25.02, 43.25, or  
10 43.26, Penal Code, pay to the division a parole supervision fee of  
11 \$5 each month during the period of parole supervision.

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

14           (c) The agency shall begin the investigation:

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

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

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

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

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

1 Penal Code; or

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

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

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

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

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

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

20 (3) an offense under Section 21.02, Penal Code  
21 (continuous sexual abuse of young child or children), or Section  
22 21.11, Penal Code (indecent with a child);

23 (4) an offense under Section 22.011, Penal Code  
24 (sexual assault);

25 (5) an offense under Section 22.02, Penal Code  
26 (aggravated assault);

27 (6) an offense under Section 22.04, Penal Code (injury

1 to a child, elderly individual, or disabled individual);

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

4 (8) an offense under Section 22.08, Penal Code (aiding  
5 suicide);

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

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

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

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

14 (13) an offense under Section 29.03, Penal Code  
15 (aggravated robbery); or

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

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

22 (8) "Sexually violent offense" means:

23 (A) an offense under Section 21.02, 21.11(a)(1),  
24 22.011, or 22.021, Penal Code;

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

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

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

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

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

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

22       SECTION 2.47. Section 301.4535(a), Occupations Code, is  
23 amended to read as follows:

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

27           (1) murder under Section 19.02, Penal Code, capital

murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code;

(2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;

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

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

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

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

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

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

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

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

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

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

(13) the sale or purchase of a child under Section

25.08, Penal Code;

(14) robbery under Section 29.02, Penal Code;

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

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

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

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

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

(1) an offense:

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

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

(2) an offense:

1                   (A) under Section 21.02, 21.11, 22.011, 22.021,  
2 25.02, or 43.25 committed against a victim younger than 17 years of  
3 age at the time of the commission of the offense regardless of  
4 whether the accused is convicted of violations of the same section  
5 more than once or is convicted of violations of more than one  
6 section; or

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

14                 (3) an offense:

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

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

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

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

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

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

9                   (A) under Section 21.02 or listed in Section  
10 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) the person:

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

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

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

2                   (A) during the same criminal transaction; or

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

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

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

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

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

18                   (1) the actor observes the commission or attempted  
19 commission of an offense prohibited by Section 21.02 or  
20 22.021(a)(2)(B) under circumstances in which a reasonable person  
21 would believe that an offense of a sexual or assaultive nature was  
22 being committed or was about to be committed against the child;

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

26                   (3) the actor could assist the child or immediately  
27 report the commission of the offense without placing the actor in

1 danger of suffering serious bodily injury or death.

2 SECTION 2.53. Article 26.13, Code of Criminal Procedure, is  
3 amended by adding Subsection (j) to read as follows:

4 (j) No plea of guilty or plea of nolo contendere may be  
5 accepted by the court if the plea is entered with respect to a  
6 sexually violent offense and contains any provision that authorizes  
7 the destruction of evidence that has previously been subjected to a  
8 forensic analysis. For purposes of this subsection, "sexually  
9 violent offense" has the meaning assigned by Section 1.07, Penal  
10 Code.

11 SECTION 2.54. Article 26.13(j), Code of Criminal Procedure,  
12 as added by this Act, applies to a plea entered on or after the  
13 effective date of this Act, regardless of when the offense that is  
14 the subject of the plea was committed.

15 SECTION 2.55. Chapter 38, Code of Criminal Procedure, is  
16 amended by adding Article 38.351 to read as follows:

17 Art. 38.351. CERTAIN DEFENDANTS ENTITLED TO FORENSIC  
18 ANALYSIS. (a) A defendant charged with an offense punishable as a  
19 capital felony under Section 21.02(i), Penal Code, may request and  
20 is entitled to a forensic analysis of any available biological  
21 matter collected during the investigation of the offense.

22 (b) The state shall pay the cost of any forensic analysis  
23 requested and performed under this article.

24 SECTION 2.56. Chapter 39, Penal Code, is amended by adding  
25 Section 39.07 to read as follows:

26 Sec. 39.07. FAILURE TO REPORT CONTINUOUS SEXUAL ABUSE OF  
27 YOUNG CHILD OR CHILDREN. (a) A person commits an offense if the

1 person:

2 (1) is:

3 (A) an officer or employee of the state, of any  
4 agency or other entity of the state, or any political subdivision of  
5 the state; or

6 (B) a person contracting with a person described  
7 by Paragraph (A); and

8 (2) knows of the commission of an offense under  
9 Section 21.02, Penal Code, committed by a person described by  
10 Subdivision (1) and fails to report the commission of that offense  
11 to an appropriate law enforcement authority.

12 (b) An offense under this section is a felony of the second  
13 degree.

14 (c) Notwithstanding Section 15.02(d), a conspiracy to  
15 commit an offense under this section is a felony of the second  
16 degree.

17 ARTICLE 3. TRANSITION; EFFECTIVE DATE

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

26 (b) The change in law made by this Act to Section 841.002,  
27 Health and Safety Code, applies only to an individual who on or

1 after September 1, 2007, is serving a sentence in the Texas  
2 Department of Criminal Justice or is committed to the Department of  
3 State Health Services for an offense committed before, on, or after  
4 the effective date of this Act.

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

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

ADOPTED

*as amended*

APR 24 2007

*Leta Spaw*  
Secretary of the Senate

By: *Deuell*

H.B. No. 8

Substitute the following for H.B. No. 8:

By: *Deuell*

C.S. H.B. No. 8

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.

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

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

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

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

(1) no limitation:

(A) murder and manslaughter;

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

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

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

(E) [+C+] an offense involving leaving the scene

1 of an accident under Section 550.021, Transportation Code, if the  
2 accident resulted in the death of a person;

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

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

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

11 (C) forgery or the uttering, using or passing of  
12 forged instruments;

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

16 (E) sexual assault, except as provided by  
17 Subdivision (1) or (5); or

18 (F) arson;

19 (3) seven years from the date of the commission of the  
20 offense:

21 (A) misapplication of fiduciary property or  
22 property of a financial institution;

23 (B) securing execution of document by deception;  
24 or

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

27 (4) five years from the date of the commission of the

1 offense:

2 (A) theft or ~~[, burglary,]~~ robbery;

3 (B) except as provided by Subdivision (5),  
4 kidnapping or burglary;

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

8 (D) abandoning or endangering a child; or

9 (E) insurance fraud;

10 (5) 20 years from the 18th birthday of the victim of  
11 one of the following offenses, if the investigation of the offense  
12 shows that the victim is younger than 17 years of age at the time the  
13 offense is committed:

14 (A) sexual performance by a child under Section  
15 43.25, Penal Code;

16 (B) aggravated kidnapping under Section  
17 20.04(a)(4), Penal Code, if the defendant committed the offense  
18 with the intent to violate or abuse the victim sexually; or

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

25 ~~[(A) indecency with a child under Section~~  
26 ~~21.11(a)(1) or (2), Penal Code, or~~

27 ~~[(B) except as provided by Subdivision (1),~~

1 ~~sexual assault under Section 22.011(a)(2), Penal Code, or~~  
2 ~~aggravated sexual assault under Section 22.021(a)(1)(B), Penal~~  
3 ~~Code]; or~~

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

6 SECTION 3. Section 4, Article 37.07, Code of Criminal  
7 Procedure, is amended by amending Subsections (a) and (b) and  
8 adding Subsection (e) to read as follows:

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

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

27 "It is also possible that the length of time for which the

1 defendant will be imprisoned might be reduced by the award of  
2 parole.

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

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

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

21 (b) In the penalty phase of the trial of a felony case in  
22 which the punishment is to be assessed by the jury rather than the  
23 court, if the offense is punishable as a felony of the first degree,  
24 if a prior conviction has been alleged for enhancement of  
25 punishment as provided by Section 12.42(b), (c) (1) or (2), or (d),  
26 Penal Code, or if the offense is a felony not designated as a  
27 capital felony or a felony of the first, second, or third degree and

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

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

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

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

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

1 authorities.

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

7 (e) In this article, "sexually violent offense" has the  
8 meaning assigned by Section 1.07, Penal Code.

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

12 (a)(1) If a defendant is tried for a capital offense in  
13 which the state seeks the death penalty, on a finding that the  
14 defendant is guilty of a capital offense, the court shall conduct a  
15 separate sentencing proceeding to determine whether the defendant  
16 shall be sentenced to death or life imprisonment without parole.  
17 The proceeding shall be conducted in the trial court and, except as  
18 provided by Article 44.29(c) [~~of this code~~], before the trial jury  
19 as soon as practicable. In the proceeding, evidence may be  
20 presented by the state and the defendant or the defendant's counsel  
21 as to any matter that the court deems relevant to sentence,  
22 including evidence of the defendant's background or character or  
23 the circumstances of the offense that mitigates against the  
24 imposition of the death penalty. This subdivision shall not be  
25 construed to authorize the introduction of any evidence secured in  
26 violation of the Constitution of the United States or of the State  
27 of Texas. The state and the defendant or the defendant's counsel

1 shall be permitted to present argument for or against sentence of  
2 death. The introduction of evidence of extraneous conduct is  
3 governed by the notice requirements of Section 3(g), Article 37.07.  
4 The court, the attorney representing the state, the defendant, or  
5 the defendant's counsel may not inform a juror or a prospective  
6 juror of the effect of a failure of a jury to agree on issues  
7 submitted under Subsection (b), ~~[(e) or]~~ (e), or (j).

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

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

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

17 (2) in cases that are not described by Subsection (j)  
18 and in which the jury charge at the guilt or innocence stage  
19 permitted the jury to find the defendant guilty as a party under  
20 Sections 7.01 and 7.02, Penal Code, whether the defendant actually  
21 caused the death of the deceased or did not actually cause the death  
22 of the deceased but intended to kill the deceased or another or  
23 anticipated that a human life would be taken.

24 (c) The state, as applicable, must prove each issue  
25 submitted under Subsection (b) or under Subsections (b)(1) and (j)  
26 ~~[of this article]~~ beyond a reasonable doubt, and the jury shall  
27 return a special verdict of "yes" or "no" on each issue submitted

1 under Subsection (b) or submitted under Subsections (b)(1) and (j)  
2 ~~[of this Article]~~.

3 (d) The court, as applicable, shall charge the jury that:

4 (1) in deliberating on the issues submitted under  
5 Subsection (b) or in deliberating the issues submitted under  
6 Subsections (b)(1) and (j) ~~[of this article]~~, it shall consider all  
7 evidence admitted at the guilt or innocence stage and the  
8 punishment stage, including evidence of the defendant's background  
9 or character or the circumstances of the offense that militates for  
10 or mitigates against the imposition of the death penalty;

11 (2) it may not answer any issue submitted under  
12 Subsection (b) or Subsections (b)(1) and (j) ~~[of this article]~~  
13 "yes" unless it agrees unanimously and it may not answer any issue  
14 "no" unless 10 or more jurors agree; and

15 (3) members of the jury need not agree on what  
16 particular evidence supports a negative answer to any issue  
17 submitted under Subsection (b) or Subsections (b)(1) and (j) ~~[of~~  
18 ~~this article]~~.

19 (e)(1) The court shall instruct the jury that if the jury  
20 returns an affirmative finding to each issue submitted under  
21 Subsection (b) or, as applicable, Subsections (b)(1) and (j), it  
22 shall answer the following issue:

23 Whether, taking into consideration all of the evidence,  
24 including the circumstances of the offense, the defendant's  
25 character and background, and the personal moral culpability of the  
26 defendant, there is a sufficient mitigating circumstance or  
27 circumstances to warrant that a sentence of life imprisonment

1 without parole rather than a death sentence be imposed.

2 (2) The court shall:

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

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

12 (g) If the jury returns an affirmative finding on each issue  
13 submitted under Subsection (b) or, as applicable, under Subsections  
14 (b)(1) and (j), and a negative finding on an issue submitted under  
15 Subsection (e)(1), the court shall sentence the defendant to death.  
16 If the jury returns a negative finding on any issue submitted under  
17 Subsection (b) or, as applicable, under Subsections (b)(1) and (j)  
18 or an affirmative finding on an issue submitted under Subsection  
19 (e)(1) or is unable to answer any issue submitted under Subsection  
20 (b) or Subsections (b)(1) and (j) or Subsection (e), the court shall  
21 sentence the defendant to confinement in the institutional division  
22 of the Texas Department of Criminal Justice for life imprisonment  
23 without parole.

24 (j) In a case punishable as a capital felony under Section  
25 12.42(c)(3), Penal Code, and in which the jury charge at the guilt  
26 or innocence stage permitted the jury to find the defendant guilty  
27 as a party under Sections 7.01 and 7.02, Penal Code, on conclusion

1 of the presentation of the evidence and in addition to the issue  
2 described by Subsection (b)(1), the court shall submit to the jury  
3 the issue of whether the defendant actually engaged in the conduct  
4 prohibited by the offense of which the defendant was found guilty or  
5 did not actually engage in the conduct prohibited by that offense  
6 but intended that the offense be committed against the victim or  
7 another intended victim.

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

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

17 SECTION 6. Subchapter C, Chapter 499, Government Code, is  
18 amended by adding Section 499.054 to read as follows:

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

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

25 (2) addresses the motivation and psychosocial  
26 education of inmates described by Subdivision (1); and

27 (3) provides relapse prevention training for inmates

1 described by Subdivision (1), including interruption of cognitive  
2 and behavioral patterns that have led the inmate to commit criminal  
3 offenses.

4 (b) The department shall establish a sex offender treatment  
5 program to treat inmates who are serving a sentence for an offense  
6 punishable under Section 12.50 or 12.42(c)(2), Penal Code, and who  
7 are not eligible for release on parole. The department shall  
8 require an inmate described by this subsection to participate in  
9 and complete the sex offender treatment program before being  
10 released from the department.

11 (c) The department may establish a sex offender treatment  
12 program to treat inmates other than those inmates described by  
13 Subsection (b).

14 SECTION 7. Section 508.145, Government Code, is amended by  
15 amending Subsections (a), (c), and (d) and adding Subsection (b) to  
16 read as follows:

17 (a) An inmate under sentence of death, ~~or~~ or serving a  
18 sentence of life imprisonment without parole, or serving a sentence  
19 for an offense for which punishment is increased under Section  
20 12.50, Penal Code, is not eligible for release on parole.

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

23 (1) for an offense for which punishment is increased  
24 under Section 12.42(c)(2), Penal Code, and the victim of which is  
25 younger than 14 years of age at the time the offense is committed;

26 or

27 (2) for an offense described by Section 3q(a)(1)(D) or

1 (E), Article 42.12, Code of Criminal Procedure, the victim of which  
2 is younger than 14 years of age at the time the offense is  
3 committed.

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

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

19 SECTION 8. Section 508.149(a), Government Code, is amended  
20 to read as follows:

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

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

27 (2) a first degree felony or a second degree felony

1 under Section 19.02, Penal Code;  
2 (3) a capital felony under Section 19.03, Penal Code;  
3 (4) a first degree felony or a second degree felony  
4 under Section 20.04, Penal Code;  
5 (5) an offense [~~a second degree felony or a third~~  
6 ~~degree felony~~] under Section 21.11, Penal Code;  
7 (6) a [~~second degree~~] felony under Section 22.011,  
8 Penal Code;  
9 (7) a first degree felony or a second degree felony  
10 under Section 22.02, Penal Code;  
11 (8) a first degree felony under Section 22.021, Penal  
12 Code;  
13 (9) a first degree felony under Section 22.04, Penal  
14 Code;  
15 (10) a first degree felony under Section 28.02, Penal  
16 Code;  
17 (11) a second degree felony under Section 29.02, Penal  
18 Code;  
19 (12) a first degree felony under Section 29.03, Penal  
20 Code;  
21 (13) a first degree felony under Section 30.02, Penal  
22 Code; [~~or~~]  
23 (14) a felony for which the punishment is increased  
24 under Section 481.134 or Section 481.140, Health and Safety Code;  
25 or  
26 (15) a first degree felony under Section 43.25, Penal  
27 Code.

1           SECTION 9. Section 841.082, Health and Safety Code, is  
2 amended by adding Subsection (b) to read as follows:

3           (b) A tracking service to which a person is required to  
4 submit under Subsection (a)(5) must:

5                   (1) track the person's location in real time;

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

9                   (3) periodically provide a cumulative report of the  
10 person's location to the case manager.

11          SECTION 10. Subchapter E, Chapter 841, Health and Safety  
12 Code, is amended by adding Section 841.084 to read as follows:

13          Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding  
14 Section 841.146(c), a civilly committed person who is not indigent  
15 is responsible for the cost of the tracking service required by  
16 Section 841.082 and monthly shall pay to the council the amount that  
17 the council determines will be necessary to defray the cost of  
18 operating the service with respect to the person during the  
19 subsequent month. The council immediately shall transfer the money  
20 to the appropriate service provider.

21          SECTION 11. Section 1.07(a), Penal Code, is amended by  
22 adding Subdivision (50) to read as follows:

23                   (50) "Sexually violent offense" means any of the  
24 following offenses:

25                           (A) an offense under Section 22.011 (Sexual  
26 assault) or 22.021 (Aggravated sexual assault);

27                           (B) an offense under Section 43.25 (Sexual

1 performance by a child);

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

5 (D) an offense under Section 30.02 (Burglary), if  
6 the offense is punishable under Subsection (d) of that section and  
7 the defendant committed the offense with intent to commit an  
8 offense described by Paragraph (A) or (C).

9 SECTION 12. Section 12.42(c), Penal Code, is amended to  
10 read as follows:

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

18 (2) Notwithstanding Subdivision (1), a [A] defendant  
19 shall be punished by imprisonment in the institutional division for  
20 life if:

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

22 (i) under Section 22.021 or 22.011, Penal  
23 Code;

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

27 (iii) under Section 30.02, Penal Code,

1 punishable under Subsection (d) of that section, if the defendant  
2 committed the offense with the intent to commit a felony described  
3 by Subparagraph (i) or (ii) [~~or a felony under Section 21.11 or~~  
4 ~~22.011, Penal Code~~]; or

5 (iv) under Section 43.25, Penal Code; and

6 (B) the defendant has been previously convicted  
7 of an offense:

8 (i) under Section 43.25 or 43.26, Penal  
9 Code, or an offense under Section 43.23, Penal Code, punishable  
10 under Subsection (h) of that section;

11 (ii) under Section 21.11, 22.011, 22.021,  
12 or 25.02, Penal Code;

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

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

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

23 (3) Notwithstanding Subdivision (1) or (2), a  
24 defendant shall be punished for a capital felony if it is shown on  
25 the trial of a sexually violent offense punishable as a felony of  
26 the first degree that:

27 (A) the victim of the offense is younger than 14

1 years of age at the time the offense is committed; and

2 (B) the defendant has previously been finally  
3 convicted of:

4 (i) a sexually violent offense, the victim  
5 of which was younger than 14 years of age at the time that offense  
6 was committed; or

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

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

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

16 (b) If it is shown on the trial of a sexually violent offense  
17 punishable as a felony of the first degree that the victim is  
18 younger than 14 years of age at the time the offense is committed,  
19 the minimum term of imprisonment for the offense is increased to 25  
20 years.

21 SECTION 14. Section 20.04(d), Penal Code, is amended to  
22 read as follows:

23 (d) At the punishment stage of a trial, the defendant may  
24 raise the issue as to whether he voluntarily released the victim in  
25 a safe place. If the defendant proves the issue in the affirmative  
26 by a preponderance of the evidence, the offense is a felony of the  
27 second degree. This subsection does not apply if the victim of the

1 offense is younger than 14 years of age at the time the offense is  
2 committed.

3 SECTION 15. Section 38.05, Penal Code, is amended by  
4 amending Subsection (c) and adding Subsection (d) to read as  
5 follows:

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

8 (d) An [~~except that the~~] offense under this section is a  
9 felony of the third degree if the person who is harbored, concealed,  
10 provided with a means of avoiding arrest or effecting escape, or  
11 warned of discovery or apprehension is under arrest for, charged  
12 with, or convicted of a felony, including an offense under Section  
13 62.102, Code of Criminal Procedure, or is in custody or detention  
14 for, is alleged in a petition to have engaged in, or has been  
15 adjudicated as having engaged in delinquent conduct that violates a  
16 penal law of the grade of felony, including an offense under Section  
17 62.102, Code of Criminal Procedure, and the person charged under  
18 this section knew that the person they harbored, concealed,  
19 provided with a means of avoiding arrest or effecting escape, or  
20 warned of discovery or apprehension is under arrest for, charged  
21 with, or convicted of a felony, or is in custody or detention for,  
22 is alleged in a petition to have engaged in, or has been adjudicated  
23 as having engaged in delinquent conduct that violates a penal law of  
24 the grade of felony.

25 SECTION 16. Sections 43.25(c) and (e), Penal Code, are  
26 amended to read as follows:

27 (c) An offense under Subsection (b) is a felony of the

1 second degree, except that the offense is a felony of the first  
2 degree if the victim is younger than 14 years of age at the time the  
3 offense is committed.

4 (e) An offense under Subsection (d) is a felony of the third  
5 degree, except that the offense is a felony of the first degree if  
6 the victim is younger than 14 years of age at the time the offense is  
7 committed.

8 SECTION 17. (a) Except as provided by Subsections (b) and  
9 (c) of this section, the change in law made by this Act applies only  
10 to an offense committed on or after September 1, 2007. An offense  
11 committed before September 1, 2007, is covered by the law in effect  
12 when the offense was committed, and the former law is continued in  
13 effect for that purpose. For the purposes of this section, an  
14 offense was committed before September 1, 2007, if any element of  
15 the offense occurred before that date.

16 (b) The change in law made by this Act to Chapter 841, Health  
17 and Safety Code, applies only to an individual who on or after  
18 September 1, 2007, is serving a sentence in the Texas Department of  
19 Criminal Justice or is committed to the Department of State Health  
20 Services for an offense committed before, on, or after the  
21 effective date of this Act.

22 (c) The change in law made by this Act to Article 12.01, Code  
23 of Criminal Procedure, does not apply to an offense if the  
24 prosecution of that offense becomes barred by limitation before the  
25 effective date of this Act. The prosecution of that offense remains  
26 barred as if this Act had not taken effect.

27 SECTION 18. This Act takes effect September 1, 2007.

# ADOPTED

APR 24 2007

*Leta Law*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Senell*

1 Amend C.S.H.B. No. 8 (Senate Committee Printing) by striking  
2 all below the enacting clause and substituting the following:

3 ARTICLE 1. CREATION, PROSECUTION, AND PUNISHMENT OF OFFENSES

4 SECTION 1.01. This Act shall be known as the Jessica  
5 Lunsford Act.

6 SECTION 1.02. Chapter 2, Code of Criminal Procedure, is  
7 amended by adding Article 2.021 to read as follows:

8 Art. 2.021. DUTIES OF ATTORNEY GENERAL. The attorney  
9 general may offer to a county or district attorney the assistance of  
10 the attorney general's office in the prosecution of an offense  
11 described by Article 60.051(g). On request of a county or district  
12 attorney, the attorney general shall assist in the prosecution of  
13 an offense described by Article 60.51(g). For purposes of this  
14 article, assistance includes investigative, technical, and  
15 litigation assistance of the attorney general's office.

16 SECTION 1.03. Article 12.01, Code of Criminal Procedure, is  
17 amended to read as follows:

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

21 (1) no limitation:

22 (A) murder and manslaughter;

23 (B) sexual assault under Section 22.011(a)(2),  
24 Penal Code, or aggravated sexual assault under Section  
25 22.021(a)(1)(B), Penal Code;

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

1 readily ascertained;

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

4 (E) indecency with a child under Section 21.11,  
5 Penal Code; or

6 (F) [~~C~~] an offense involving leaving the scene  
7 of an accident under Section 550.021, Transportation Code, if the  
8 accident resulted in the death of a person;

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

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

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

17 (C) forgery or the uttering, using or passing of  
18 forged instruments;

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

22 (E) sexual assault, except as provided by  
23 Subdivision (1) or (5); or

24 (F) arson;

25 (3) seven years from the date of the commission of the  
26 offense:

27 (A) misapplication of fiduciary property or  
28 property of a financial institution;

29 (B) securing execution of document by deception;  
30 or

31 (C) a violation under Sections 162.403(22)-(39),

1 Tax Code;

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

4 (A) theft or ~~[, burglary,]~~ robbery;

5 (B) except as provided by Subdivision (5),  
6 kidnapping or burglary;

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

10 (D) abandoning or endangering a child; or

11 (E) insurance fraud;

12 (5) if the investigation of the offense shows that the  
13 victim is younger than 17 years of age at the time the offense is  
14 committed, 20 years from the 18th birthday of the victim of one of  
15 the following offenses:

16 (A) sexual performance by a child under Section  
17 43.25, Penal Code;

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

21 (C) burglary under Section 30.02, Penal Code, if  
22 the offense is punishable under Subsection (d) of that section and  
23 the defendant committed the offense with the intent to commit an  
24 offense described by Subdivision (1)(B) or (D) of this article or  
25 Paragraph (B) of this subdivision ~~[ten years from the 18th birthday~~  
26 ~~of the victim of the offense.]~~

27 ~~[(A) indecency with a child under Section~~  
28 ~~21.11(a)(1) or (2), Penal Code, or~~

29 ~~[(B) except as provided by Subdivision (1),~~  
30 ~~sexual assault under Section 22.011(a)(2), Penal Code, or~~  
31 ~~aggravated sexual assault under Section 22.021(a)(1)(B), Penal~~

1 ~~Code~~]; or

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

4 SECTION 1.04. Chapter 37, Code of Criminal Procedure, is  
5 amended by adding Article 37.072 to read as follows:

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

7 Sec. 1. If a defendant is found guilty in a capital felony  
8 case punishable under Section 12.42(c)(3), Penal Code, in which the  
9 state does not seek the death penalty, the judge shall sentence the  
10 defendant to life imprisonment without parole.

11 Sec. 2. (a)(1) If a defendant is tried for an offense  
12 punishable under Section 12.42(c)(3), Penal Code, in which the  
13 state seeks the death penalty, on a finding that the defendant is  
14 guilty of a capital offense, the court shall conduct a separate  
15 sentencing proceeding to determine whether the defendant shall be  
16 sentenced to death or life imprisonment without parole. The  
17 proceeding shall be conducted in the trial court and, except as  
18 provided by Article 44.29(d) of this code, before the trial jury as  
19 soon as practicable. In the proceeding, evidence may be presented  
20 by the state and the defendant or the defendant's counsel as to any  
21 matter that the court considers relevant to sentence, including  
22 evidence of the defendant's background or character or the  
23 circumstances of the offense that mitigates against the imposition  
24 of the death penalty. This subdivision may not be construed to  
25 authorize the introduction of any evidence secured in violation of  
26 the Constitution of the United States or of the State of Texas. The  
27 state and the defendant or the defendant's counsel shall be  
28 permitted to present argument for or against sentence of death. The  
29 introduction of evidence of extraneous conduct is governed by the  
30 notice requirements of Section 3(g), Article 37.07. The court, the  
31 attorney representing the state, the defendant, or the defendant's

1 counsel may not inform a juror or a prospective juror of the effect  
2 of a failure of a jury to agree on issues submitted under Subsection  
3 (b) or (e).

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

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

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

13 (2) in cases in which the jury charge at the guilt or  
14 innocence stage permitted the jury to find the defendant guilty as a  
15 party under Sections 7.01 and 7.02, Penal Code, whether the  
16 defendant actually engaged in the conduct prohibited by Section  
17 22.021, Penal Code, or did not actually engage in the conduct  
18 prohibited by Section 22.021, Penal Code, but intended that the  
19 offense be committed against the victim or another intended victim.

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

24 (d) The court shall charge the jury that:

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

31 (2) it may not answer any issue submitted under

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

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

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

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

16 (2) The court shall:

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

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

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

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

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

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

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

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

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

17           SECTION 1.05. Chapter 38, Code of Criminal Procedure, is  
18 amended by adding Article 38.06 to read as follows:

19           Art. 38.06. CERTAIN REPORTS AND DATA USED TO COMPILE THOSE  
20 REPORTS. The report described by Section 411.052, Government Code,  
21 and data used to compile the report are not admissible as evidence  
22 in a criminal trial.

23           SECTION 1.06. Section 3g(a), Article 42.12, Code of  
24 Criminal Procedure, is amended to read as follows:

25           (a) The provisions of Section 3 of this article do not  
26 apply:

27                   (1) to a defendant adjudged guilty of an offense  
28 under:

29                           (A) Section 19.02, Penal Code (Murder);

30                           (B) Section 19.03, Penal Code (Capital murder);

31                           (C) Section 21.11(a)(1), Penal Code (Indecency

1 with a child);

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

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

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

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

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

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

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

18 (I) Section 43.25, Penal Code (Sexual  
19 performance by a child), if the victim of the offense is younger  
20 than 14 years of age at the time the offense is committed; 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  
28 judgment of the court. On an affirmative finding that the deadly  
29 weapon was a firearm, the court shall enter that finding in its  
30 judgment.

31 SECTION 1.07. Section 4(d), Article 42.12, Code of Criminal

1 Procedure, is amended to read as follows:

2 (d) A defendant is not eligible for community supervision  
3 under this section if the defendant:

4 (1) is sentenced to a term of imprisonment that  
5 exceeds 10 years;

6 (2) is convicted of a state jail felony for which  
7 suspension of the imposition of the sentence occurs automatically  
8 under Section 15(a);

9 (3) does not file a sworn motion under Subsection (e)  
10 of this section or for whom the jury does not enter in the verdict a  
11 finding that the information contained in the motion is true; ~~[or]~~

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

17 (5) is convicted of an offense listed in Section  
18 3g(a)(1)(C), (E), (H), or (I), if the victim of the offense was  
19 younger than 14 years of age at the time the offense was committed;  
20 or

21 (6) is convicted of an offense listed in Section  
22 3g(a)(1)(D), if the victim of the offense was younger than 14 years  
23 of age at the time the offense was committed and the actor committed  
24 the offense with the intent to violate or abuse the victim sexually.

25 SECTION 1.08. Section 5(d), Article 42.12, Code of Criminal  
26 Procedure, is amended to read as follows:

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

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

30 (A) under Section 49.04, 49.05, 49.06, 49.07, or  
31 49.08, Penal Code; or

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

6 (2) the defendant:

7 (A) is charged with an offense under Section  
8 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the  
9 victim, or a felony described by Section 13B(b) of this article; and

10 (B) has previously been placed on community  
11 supervision for any offense under Paragraph (A) of this  
12 subdivision; or

13 (3) the defendant is charged with an offense under:

14 (A) Section 21.02, Penal Code; or

15 (B) Section 22.021, Penal Code, that is  
16 punishable under Subsection (f) of that section or under Section  
17 12.42(c)(3), Penal Code.

18 SECTION 1.09. Article 60.051, Code of Criminal Procedure,  
19 is amended by adding Subsection (g) to read as follows:

20 (g) In addition to the information described by Subsections  
21 (a)-(f), information in the computerized criminal history system  
22 must include the age of the victim of the offense if the defendant  
23 was arrested for or charged with an offense under:

24 (1) Section 21.02 (Continuous sexual abuse of young  
25 child or children), Penal Code;

26 (2) Section 21.11 (Indecency with a child), Penal  
27 Code;

28 (3) Section 22.011 (Sexual assault) or 22.021  
29 (Aggravated sexual assault), Penal Code;

30 (4) Section 43.25 (Sexual performance by a child),  
31 Penal Code;

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

4           (6) Section 30.02 (Burglary), Penal Code, if the  
5 offense is punishable under Subsection (d) of that section and the  
6 defendant committed the offense with intent to commit an offense  
7 described by Subdivision (2), (3), or (5).

8           SECTION 1.10. Subchapter D, Chapter 411, Government Code,  
9 is amended by adding Section 411.052 to read as follows:

10           Sec. 411.052. REPORT CONCERNING CERTAIN SEXUAL OFFENSES.

11 (a) Not later than January 15 of each odd-numbered year, the  
12 department shall submit to the governor, the lieutenant governor,  
13 the speaker of the house of representatives, and the presiding  
14 officer of each standing committee of the senate and the house of  
15 representatives that has primary jurisdiction over criminal  
16 jurisprudence a report summarizing the arrests, prosecutions, and  
17 final dispositions concerning all offenses described by Article  
18 60.051(g), Code of Criminal Procedure, the victims of which are  
19 younger than 14 years of age at the time the offenses were  
20 committed.

21           (b) The report described by Subsection (a) must indicate  
22 each circumstance in which the offense for which a defendant was  
23 arrested was different from the offense with which the defendant  
24 was charged.

25           SECTION 1.11. Subchapter C, Chapter 499, Government Code,  
26 is amended by adding Section 499.054 to read as follows:

27           Sec. 499.054. SEX OFFENDER TREATMENT PROGRAM. (a) In this  
28 section, "sex offender treatment program" means a comprehensive  
29 treatment program that:

30           (1) psychologically evaluates inmates who are serving  
31 a sentence for an offense described by Section 12.42(c)(2), Penal

1 Code;

2 (2) addresses the motivation and psychosocial  
3 education of inmates described by Subdivision (1); and

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

8 (b) The department shall establish a sex offender treatment  
9 program to treat inmates who are serving sentences for offenses  
10 punishable under Section 21.02(g) or 22.021(f), Penal Code. The  
11 department shall require an inmate described by this subsection to  
12 participate in and complete the sex offender treatment program  
13 before being released from the department.

14 (c) The department may establish a sex offender treatment  
15 program to treat inmates other than those inmates described by  
16 Subsection (b).

17 SECTION 1.12. Sections 508.145(a) and (d), Government Code,  
18 are amended to read as follows:

19 (a) An inmate under sentence of death, ~~[or]~~ serving a  
20 sentence of life imprisonment without parole, serving a sentence  
21 for an offense under Section 21.02, Penal Code, or serving a  
22 sentence for an offense under Section 22.021, Penal Code, that is  
23 punishable under Subsection (f) of that section is not eligible for  
24 release on parole.

25 (d) An inmate serving a sentence for an offense described by  
26 Section 3g(a)(1)(A), (C), (D), (E), (F), (G), ~~[or]~~ (H), or (I),  
27 Article 42.12, Code of Criminal Procedure, or for an offense for  
28 which the judgment contains an affirmative finding under Section  
29 3g(a)(2) of that article, is not eligible for release on parole  
30 until the inmate's actual calendar time served, without  
31 consideration of good conduct time, equals one-half of the sentence

1 or 30 calendar years, whichever is less, but in no event is the  
2 inmate eligible for release on parole in less than two calendar  
3 years.

4 SECTION 1.13. Section 508.149(a), Government Code, is  
5 amended to read as follows:

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

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

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

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

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

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

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

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

23 (8) a first degree felony under Section 22.021, Penal  
24 Code;

25 (9) a first degree felony under Section 22.04, Penal  
26 Code;

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

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

31 (12) a first degree felony under Section 29.03, Penal

1 Code;

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

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

6 (15) a first or second degree felony under Section  
7 43.25, Penal Code, the victim of which was younger than 14 years of  
8 age at the time the offense was committed; or

9 (16) an offense under Section 21.02, Penal Code.

10 SECTION 1.14. Subchapter C, Chapter 552, Government Code,  
11 is amended by adding Section 552.149 to read as follows:

12 Sec. 552.149. EXCEPTION: DATA USED TO COMPILE CERTAIN  
13 REPORTS. The data used to compile the report described by Section  
14 411.052, including the name or identity of a victim of an offense  
15 about which information is included in the report, is confidential  
16 and not subject to disclosure under this chapter, unless another  
17 provision of this chapter specifically requires the disclosure of  
18 the data.

19 SECTION 1.15. Section 841.082, Health and Safety Code, is  
20 amended by adding Subsection (b) to read as follows:

21 (b) A tracking service to which a person is required to  
22 submit under Subsection (a)(5) must:

23 (1) track the person's location in real time;

24 (2) be able to provide a real-time report of the  
25 person's location to the case manager at the case manager's request;  
26 and

27 (3) periodically provide a cumulative report of the  
28 person's location to the case manager.

29 SECTION 1.16. Subchapter E, Chapter 841, Health and Safety  
30 Code, is amended by adding Section 841.084 to read as follows:

31 Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding

1 Section 841.146(c), a civilly committed person who is not indigent  
2 is responsible for the cost of the tracking service required by  
3 Section 841.082 and monthly shall pay to the council the amount that  
4 the council determines will be necessary to defray the cost of  
5 operating the service with respect to the person during the  
6 subsequent month. The council immediately shall transfer the money  
7 to the appropriate service provider.

8 SECTION 1.17. Section 12.42(b), Penal Code, is amended to  
9 read as follows:

10 (b) Except as provided by Subsection (c)(2), if ~~[If]~~ it is  
11 shown on the trial of a second-degree felony that the defendant has  
12 been once before convicted of a felony, on conviction he shall be  
13 punished for a first-degree felony.

14 SECTION 1.18. Section 12.42(c), Penal Code, is amended to  
15 read as follows:

16 (c)(1) If ~~[Except as provided by Subdivision (2), if]~~ it is  
17 shown on the trial of a first-degree felony that the defendant has  
18 been once before convicted of a felony, on conviction he shall be  
19 punished by imprisonment in the ~~[institutional division of the]~~  
20 Texas Department of Criminal Justice for life, or for any term of  
21 not more than 99 years or less than 15 years. In addition to  
22 imprisonment, an individual may be punished by a fine not to exceed  
23 \$10,000.

24 (2) Notwithstanding Subdivision (1), a [A] defendant  
25 shall be punished by imprisonment in the Texas Department of  
26 Criminal Justice ~~[institutional division]~~ for life if:

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

28 (i) under Section 21.11(a)(1), 22.021, or  
29 22.011, Penal Code;

30 (ii) under Section 20.04(a)(4), Penal Code,  
31 if the defendant committed the offense with the intent to violate or

1 abuse the victim sexually; or

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

7 (B) the defendant has been previously convicted  
8 of an offense:

9 (i) under Section 43.25 or 43.26, Penal  
10 Code, or an offense under Section 43.23, Penal Code, punishable  
11 under Subsection (h) of that section;

12 (ii) under Section 21.11, 22.011, 22.021,  
13 or 25.02, Penal Code;

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

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

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

24 (3) Notwithstanding Subdivision (1) or (2), a  
25 defendant shall be punished for a capital felony if it is shown on  
26 the trial of an offense under Section 22.021 otherwise punishable  
27 under Subsection (f) of that section that the defendant has  
28 previously been finally convicted of:

29 (A) an offense under Section 22.021 that was  
30 committed against a victim described by Section 22.021(f)(1) or was  
31 committed against a victim described by Section 22.021(f)(2) and in

1 a manner described by Section 22.021(f)(2); or

2 (B) an offense that was committed under the laws  
3 of another state that:

4 (i) contains elements that are  
5 substantially similar to the elements of an offense under Section  
6 22.021; and

7 (ii) was committed against a victim  
8 described by Section 22.021(f)(1) or was committed against a victim  
9 described by Section 22.021(f)(2) and in a manner substantially  
10 similar to a manner described by Section 22.021(f)(2).

11 (4) Notwithstanding Subdivision (1) or (2), a  
12 defendant shall be punished by imprisonment in the Texas Department  
13 of Criminal Justice for life without parole if it is shown on the  
14 trial of an offense under Section 21.02 that the defendant has  
15 previously been finally convicted of:

16 (A) an offense under Section 21.02; or

17 (B) an offense that was committed under the laws  
18 of another state and that contains elements that are substantially  
19 similar to the elements of an offense under Section 21.02.

20 SECTION 1.19. Section 12.42(d), Penal Code, is amended to  
21 read as follows:

22 (d) Except as provided by Subsection (c)(2), if [~~if~~] it is  
23 shown on the trial of a felony offense other than a state jail  
24 felony punishable under Section 12.35(a) that the defendant has  
25 previously been finally convicted of two felony offenses, and the  
26 second previous felony conviction is for an offense that occurred  
27 subsequent to the first previous conviction having become final, on  
28 conviction he shall be punished by imprisonment in the  
29 institutional division of the Texas Department of Criminal Justice  
30 for life, or for any term of not more than 99 years or less than 25  
31 years.

1           SECTION 1.20. Chapter 21, Penal Code, is amended by adding  
2 Section 21.02 to read as follows:

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

6           (b) A person commits an offense if:

7               (1) during a period that is 30 or more days in  
8 duration, the person commits two or more acts of sexual abuse,  
9 regardless of whether the acts of sexual abuse are committed  
10 against one or more victims; and

11               (2) at the time of the commission of each of the acts  
12 of sexual abuse, the actor is 17 years of age or older and the victim  
13 is a child younger than 14 years of age.

14           (c) For purposes of this section, "act of sexual abuse"  
15 means any act that is a violation of one or more of the following  
16 penal laws:

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

20               (2) sexual assault under Section 22.011;

21               (3) aggravated sexual assault under Section 22.021;

22               (4) burglary under Section 30.02, if the offense is  
23 punishable under Subsection (d) of that section and the defendant  
24 committed the offense with the intent to commit an offense listed in  
25 Subdivisions (1)-(3); and

26               (5) sexual performance by a child under Section 43.25.

27           (d) If a jury is the trier of fact, members of the jury are  
28 not required to agree unanimously on which specific acts of sexual  
29 abuse were committed by the defendant or the exact date when those  
30 acts were committed. The jury must agree unanimously that the  
31 defendant, during a period that is 30 or more days in duration,

1 committed two or more acts of sexual abuse.

2 (e) A defendant may not be convicted in the same criminal  
3 action of an offense listed under Subsection (c) the victim of which  
4 is the same victim as a victim of the offense alleged under  
5 Subsection (b) unless the offense listed in Subsection (c):

6 (1) is charged in the alternative;

7 (2) occurred outside the period in which the offense  
8 alleged under Subsection (b) was committed; or

9 (3) is considered by the trier of fact to be a lesser  
10 included offense of the offense alleged under Subsection (b).

11 (f) A defendant may not be charged with more than one count  
12 under Subsection (b) if all of the specific acts of sexual abuse  
13 that are alleged to have been committed are alleged to have been  
14 committed against a single victim.

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

19 SECTION 1.21. Section 22.021, Penal Code, is amended by  
20 adding Subsection (f) to read as follows:

21 (f) The minimum term of imprisonment for an offense under  
22 this section is increased to 25 years if:

23 (1) the victim of the offense is younger than six years  
24 of age at the time the offense is committed; or

25 (2) the victim of the offense is younger than 14 years  
26 of age at the time the offense is committed and the actor:

27 (A) commits the offense in a manner described by  
28 Subsection (a)(2)(A); or

29 (B) administers or provides a controlled  
30 substance, other than a controlled substance described by  
31 Subsection (a)(2)(A)(vi), or alcohol to the victim of the offense

1 with the intent of facilitating the commission of the offense.

2 SECTION 1.22. Section 38.05, Penal Code, is amended by  
3 amending Subsection (c) and adding Subsection (d) to read as  
4 follows:

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

7 (d) An [except that the] offense under this section is a  
8 felony of the third degree if the person who is harbored, concealed,  
9 provided with a means of avoiding arrest or effecting escape, or  
10 warned of discovery or apprehension is under arrest for, charged  
11 with, or convicted of a felony, including an offense under Section  
12 62.102, Code of Criminal Procedure, or is in custody or detention  
13 for, is alleged in a petition to have engaged in, or has been  
14 adjudicated as having engaged in delinquent conduct that violates a  
15 penal law of the grade of felony, including an offense under Section  
16 62.102, Code of Criminal Procedure, and the person charged under  
17 this section knew that the person they harbored, concealed,  
18 provided with a means of avoiding arrest or effecting escape, or  
19 warned of discovery or apprehension is under arrest for, charged  
20 with, or convicted of a felony, or is in custody or detention for,  
21 is alleged in a petition to have engaged in, or has been adjudicated  
22 as having engaged in delinquent conduct that violates a penal law of  
23 the grade of felony.

24 SECTION 1.23. Sections 43.25(c) and (e), Penal Code, are  
25 amended to read as follows:

26 (c) An offense under Subsection (b) is a felony of the  
27 second degree, except that the offense is a felony of the first  
28 degree if the victim is younger than 14 years of age at the time the  
29 offense is committed.

30 (e) An offense under Subsection (d) is a felony of the third  
31 degree, except that the offense is a felony of the second degree if

1 the victim is younger than 14 years of age at the time the offense is  
2 committed.

3 ARTICLE 2. PRIORITIZATION OF CASES INVOLVING THE PROSECUTION OF  
4 CERTAIN OFFENSES

5 SECTION 2.01. Subchapter A, Chapter 24, Government Code, is  
6 amended by adding Section 24.023 to read as follows:

7 Sec. 24.023. PRIORITIZATION OF CASES INVOLVING CERTAIN  
8 SEXUAL OFFENSES. (a) In supervising the expeditious movement of  
9 caseloads under Section 74.092, the local administrative district  
10 judge or, if applicable, the presiding judge of a division  
11 responsible for trying criminal cases shall ensure that priority is  
12 given to cases involving the prosecution of sexually violent  
13 offenses, the victims of which are children.

14 (b) For purposes of this section:

15 (1) "Child" means a person who is younger than 14 years  
16 of age.

17 (2) "Sexually violent offense" means an offense that  
18 is described by Article 62.001(6)(A), (B), or (C), Code of Criminal  
19 Procedure.

20 SECTION 2.02. Subchapter A, Chapter 25, Government Code, is  
21 amended by adding Section 25.0019 to read as follows:

22 Sec. 25.0019. PRIORITIZATION OF CASES INVOLVING CERTAIN  
23 SEXUAL OFFENSES. (a) In supervising the expeditious movement of  
24 caseloads under Section 74.092, the local administrative statutory  
25 county court judge shall ensure that priority is given to cases  
26 involving the prosecution of sexually violent offenses, the victims  
27 of which are children.

28 (b) For purposes of this section:

29 (1) "Child" means a person who is younger than 14 years  
30 of age.

31 (2) "Sexually violent offense" means an offense that

1 is described by Article 62.001(6)(A), (B), or (C), Code of Criminal  
2 Procedure.

3 ARTICLE 3. CONFORMING AMENDMENTS

4 SECTION 3.01. Section 16.0045(a), Civil Practice and  
5 Remedies Code, is amended to read as follows:

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

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

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

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

14 SECTION 3.02. Section 33.013(b), Civil Practice and  
15 Remedies Code, is amended to read as follows:

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

20 (1) the percentage of responsibility attributed to the  
21 defendant with respect to a cause of action is greater than 50  
22 percent; or

23 (2) the defendant, with the specific intent to do harm  
24 to others, acted in concert with another person to engage in the  
25 conduct described in the following provisions of the Penal Code and  
26 in so doing proximately caused the damages legally recoverable by  
27 the claimant:

28 (A) Section 19.02 (murder);

29 (B) Section 19.03 (capital murder);

30 (C) Section 20.04 (aggravated kidnapping);

31 (D) Section 22.02 (aggravated assault);

1 (E) Section 22.011 (sexual assault);  
2 (F) Section 22.021 (aggravated sexual assault);  
3 (G) Section 22.04 (injury to a child, elderly  
4 individual, or disabled individual);  
5 (H) Section 32.21 (forgery);  
6 (I) Section 32.43 (commercial bribery);  
7 (J) Section 32.45 (misapplication of fiduciary  
8 property or property of financial institution);  
9 (K) Section 32.46 (securing execution of  
10 document by deception);  
11 (L) Section 32.47 (fraudulent destruction,  
12 removal, or concealment of writing); ~~[or]~~  
13 (M) conduct described in Chapter 31 the  
14 punishment level for which is a felony of the third degree or  
15 higher; or  
16 (N) Section 21.02 (continuous sexual abuse of  
17 young child or children).

18 SECTION 3.03. Section 41.008(c), Civil Practice and  
19 Remedies Code, is amended to read as follows:

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

- 25 (1) Section 19.02 (murder);  
26 (2) Section 19.03 (capital murder);  
27 (3) Section 20.04 (aggravated kidnapping);  
28 (4) Section 22.02 (aggravated assault);  
29 (5) Section 22.011 (sexual assault);  
30 (6) Section 22.021 (aggravated sexual assault);  
31 (7) Section 22.04 (injury to a child, elderly

1 individual, or disabled individual, but not if the conduct occurred  
2 while providing health care as defined by Section 74.001);

3 (8) Section 32.21 (forgery);

4 (9) Section 32.43 (commercial bribery);

5 (10) Section 32.45 (misapplication of fiduciary  
6 property or property of financial institution);

7 (11) Section 32.46 (securing execution of document by  
8 deception);

9 (12) Section 32.47 (fraudulent destruction, removal,  
10 or concealment of writing);

11 (13) Chapter 31 (theft) the punishment level for which  
12 is a felony of the third degree or higher;

13 (14) Section 49.07 (intoxication assault); ~~[or]~~

14 (15) Section 49.08 (intoxication manslaughter); or

15 (16) Section 21.02 (continuous sexual abuse of young  
16 child or children).

17 SECTION 3.04. Section 125.0015(a), Civil Practice and  
18 Remedies Code, is amended to read as follows:

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

23 (1) discharge of a firearm in a public place as  
24 prohibited by the Penal Code;

25 (2) reckless discharge of a firearm as prohibited by  
26 the Penal Code;

27 (3) engaging in organized criminal activity as a  
28 member of a combination as prohibited by the Penal Code;

29 (4) delivery, possession, manufacture, or use of a  
30 controlled substance in violation of Chapter 481, Health and Safety  
31 Code;

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

3           (6) prostitution, promotion of prostitution, or  
4 aggravated promotion of prostitution as prohibited by the Penal  
5 Code;

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

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

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

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

15           (11) aggravated sexual assault as described by Section  
16 22.021, Penal Code;

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

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

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

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

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

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

29           SECTION 3.05. Article 7A.01(a), Code of Criminal Procedure,  
30 is amended to read as follows:

31           (a) A person who is the victim of an offense under Section

1 21.02, 22.011, or 22.021, Penal Code, or a prosecuting attorney  
2 acting on behalf of the person, may file an application for a  
3 protective order under this chapter without regard to the  
4 relationship between the applicant and the alleged offender.

5 SECTION 3.06. Section 5(a), Article 11.071, Code of  
6 Criminal Procedure, is amended to read as follows:

7 (a) If a subsequent application for a writ of habeas corpus  
8 is filed after filing an initial application, a court may not  
9 consider the merits of or grant relief based on the subsequent  
10 application unless the application contains sufficient specific  
11 facts establishing that:

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

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

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

26 SECTION 3.07. Article 15.051(a), Code of Criminal  
27 Procedure, is amended to read as follows:

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

1           SECTION 3.08. Article 17.03(b), Code of Criminal Procedure,  
2 is amended to read as follows:

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

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

7                         (A) Section 19.03 (Capital Murder);

8                         (B) Section 20.04 (Aggravated Kidnapping);

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

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

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

15                        (F) Section 29.03 (Aggravated Robbery);

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

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

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

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

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

31           SECTION 3.09. 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 (indecenty 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 3.10. Article 17.091, Code of Criminal Procedure,  
19 is amended to read as follows:

20 Art. 17.091. NOTICE OF CERTAIN BAIL REDUCTIONS REQUIRED.  
21 Before a judge or magistrate reduces the amount of bail set for a  
22 defendant charged with an offense listed in Section 3g, Article  
23 42.12, or an offense described by Article 62.001(5) ~~[62.01(5)]~~, the  
24 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  
28 or the defendant or the defendant's counsel, an opportunity for a  
29 hearing concerning the proposed bail reduction.

30 SECTION 3.11. Article 18.021(a), Code of Criminal  
31 Procedure, is amended to read as follows:

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

9           SECTION 3.12. Article 21.31(a), Code of Criminal Procedure,  
10 is amended to read as follows:

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

31           SECTION 3.13. Section 3, Article 31.08, Code of Criminal

1 Procedure, is amended to read as follows:

2       Sec. 3. Except for the review of a death sentence under  
3 Section 2(h), Article 37.071, or under Section 2(h), Article 37.072  
4 ~~[37.071(h) of this code]~~, an appeal taken in a cause returned to the  
5 original county under this article must be docketed in the  
6 appellate district in which the county of original venue is  
7 located.

8       SECTION 3.14. Section 2(b), Article 37.07, Code of Criminal  
9 Procedure, is amended to read as follows:

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

23       SECTION 3.15. Sections 4(a) and (b), Article 37.07, Code of  
24 Criminal Procedure, are amended to read as follows:

25       (a) In the penalty phase of the trial of a felony case in  
26 which the punishment is to be assessed by the jury rather than the  
27 court, if the offense of which the jury has found the defendant  
28 guilty is listed in Section 3g(a)(1), Article 42.12, of this code or  
29 if the judgment contains an affirmative finding under Section  
30 3g(a)(2), Article 42.12, of this code, unless the defendant has  
31 been convicted of an offense under Section 21.02, Penal Code, an

1 offense under Section 22.021, Penal Code, that is punishable under  
2 Subsection (f) of that section, or a capital felony, the court shall  
3 charge the jury in writing as follows:

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

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

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

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

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

1 law may be applied to this particular defendant."

2 (b) In the penalty phase of the trial of a felony case in  
3 which the punishment is to be assessed by the jury rather than the  
4 court, if the offense is punishable as a felony of the first degree,  
5 if a prior conviction has been alleged for enhancement of  
6 punishment as provided by Section 12.42(b), (c)(1) or (2) [~~(c)~~], or  
7 (d), Penal Code, or if the offense is a felony not designated as a  
8 capital felony or a felony of the first, second, or third degree and  
9 the maximum term of imprisonment that may be imposed for the offense  
10 is longer than 60 years, unless the offense of which the jury has  
11 found the defendant guilty is an offense that is punishable under  
12 Section 21.02(g), Penal Code, or is listed in Section 3g(a)(1),  
13 Article 42.12, of this code or the judgment contains an affirmative  
14 finding under Section 3g(a)(2), Article 42.12, of this code, the  
15 court shall charge the jury in writing as follows:

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

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

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

1 parole will be granted.

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

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

12 SECTION 3.16. Section 1, Article 38.071, Code of Criminal  
13 Procedure, is amended to read as follows:

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

- 19 (1) Section 19.02 (Murder);
- 20 (2) Section 19.03 (Capital Murder);
- 21 (3) Section 19.04 (Manslaughter);
- 22 (4) Section 20.04 (Aggravated Kidnapping);
- 23 (5) Section 21.11 (Indecency with a Child);
- 24 (6) Section 22.011 (Sexual Assault);
- 25 (7) Section 22.02 (Aggravated Assault);
- 26 (8) Section 22.021 (Aggravated Sexual Assault);
- 27 (9) Section 22.04(e) (Injury to a Child, Elderly  
28 Individual, or Disabled Individual);
- 29 (10) Section 22.04(f) (Injury to a Child, Elderly  
30 Individual, or Disabled Individual), if the conduct is committed  
31 intentionally or knowingly;

1           (11) Section 25.02 (Prohibited Sexual Conduct);  
2           (12) Section 29.03 (Aggravated Robbery); ~~[or]~~  
3           (13) Section 43.25 (Sexual Performance by a Child); or  
4           (14) Section 21.02 (Continuous Sexual Abuse of Young  
5 Child or Children).

6           SECTION 3.17. Article 42.017, Code of Criminal Procedure,  
7 is amended to read as follows:

8           Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the  
9 trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or  
10 43.25, Penal Code, the judge shall make an affirmative finding of  
11 fact and enter the affirmative finding in the judgment in the case  
12 if the judge determines that:

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

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

19           SECTION 3.18. Article 44.251, Code of Criminal Procedure,  
20 is amended by amending Subsections (a) and (c) and adding  
21 Subsection (d) to read as follows:

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

29           (c) If the court of criminal appeals finds reversible error  
30 that affects the punishment stage of the trial only, as described by  
31 Subsection (b) of this article, and the prosecuting attorney does

1 not file a motion for reformation of sentence in the period  
2 described by that subsection, the defendant shall receive a new  
3 sentencing trial in the manner required by Article 44.29(c) or (d),  
4 as applicable [~~of this code~~].

5 (d) The court of criminal appeals shall reform a sentence of  
6 death imposed under Section 12.42(c)(3), Penal Code, to a sentence  
7 of imprisonment in the Texas Department of Criminal Justice for  
8 life without parole if the United States Supreme Court:

9 (1) finds that the imposition of the death penalty  
10 under Section 12.42(c)(3), Penal Code, violates the United States  
11 Constitution; and

12 (2) issues an order that is not inconsistent with this  
13 article.

14 SECTION 3.19. Article 44.29, Code of Criminal Procedure, is  
15 amended by adding Subsection (d) to read as follows:

16 (d) If any court sets aside or invalidates the sentence of a  
17 defendant convicted of an offense punishable as a capital felony  
18 under Section 12.42(c)(3), Penal Code, and sentenced to death on  
19 the basis of any error affecting punishment only, the court shall  
20 not set the conviction aside but rather shall commence a new  
21 punishment hearing under Article 37.072, as if a finding of guilt  
22 had been returned. The court shall empanel a jury for the  
23 sentencing stage of the trial in the same manner as a jury is to be  
24 empaneled by the court in other trials before the court for the  
25 offense of which the defendant was convicted. At the new punishment  
26 hearing, the court shall permit both the state and the defendant to  
27 introduce evidence as permitted by Article 37.072.

28 SECTION 3.20. Article 56.01, Code of Criminal Procedure, is  
29 amended by adding Subdivision (2-a) to read as follows:

30 (2-a) "Sexual assault" includes an offense under  
31 Section 21.02, Penal Code.

1           SECTION 3.21. Article 56.02(a), Code of Criminal Procedure,  
2 is amended to read as follows:

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

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

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

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

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

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

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

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

1           (6) the right to receive information regarding  
2 compensation to victims of crime as provided by Subchapter B,  
3 including information related to the costs that may be compensated  
4 under that subchapter and the amount of compensation, eligibility  
5 for compensation, and procedures for application for compensation  
6 under that subchapter, the payment for a medical examination under  
7 Article 56.06 for a victim of a sexual assault, and when requested,  
8 to referral to available social service agencies that may offer  
9 additional assistance;

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

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

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

29           (10) the right to have the attorney for the state  
30 notify the employer of the victim, if requested, of the necessity of  
31 the victim's cooperation and testimony in a proceeding that may

1 necessitate the absence of the victim from work for good cause;

2 (11) the right to counseling, on request, regarding  
3 acquired immune deficiency syndrome (AIDS) and human  
4 immunodeficiency virus (HIV) infection and testing for acquired  
5 immune deficiency syndrome (AIDS), human immunodeficiency virus  
6 (HIV) infection, antibodies to HIV, or infection with any other  
7 probable causative agent of AIDS, if the offense is an offense under  
8 Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

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

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

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

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

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

25 SECTION 3.22. (a) Article 62.001(5), Code of Criminal  
26 Procedure, as renumbered from former Subdivision (5), Article  
27 62.01, Code of Criminal Procedure, and amended by Chapter 1008,  
28 Acts of the 79th Legislature, Regular Session, 2005, is reenacted  
29 and amended to conform to an amendment to former Subdivision (5),  
30 Article 62.01, by Chapter 1273, Acts of the 79th Legislature,  
31 Regular Session, 2005, and is further amended to read as follows:

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

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

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

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

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

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

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

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

30           (F) the second violation of Section 21.08  
31 (Indecent exposure), Penal Code, but not if the second violation

1 results in a deferred adjudication;

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

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

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

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

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

22 SECTION 3.23. Article 62.001(6), Code of Criminal  
23 Procedure, is amended to read as follows:

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

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

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

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

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

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

14 SECTION 3.24. Article 102.0186(a), Code of Criminal  
15 Procedure, is amended to read as follows:

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

19 SECTION 3.25. Section 25.0341(a), Education Code, as added  
20 by Chapter 997, Acts of the 79th Legislature, Regular Session,  
21 2005, is amended to read as follows:

22 (a) This section applies only to:

23 (1) a student:

24 (A) who has been convicted of or placed on  
25 deferred adjudication for the offense of continuous sexual abuse of  
26 young child or children under Section 21.02, Penal Code, sexual  
27 assault under Section 22.011, Penal Code, or aggravated sexual  
28 assault under Section 22.021, Penal Code, committed against another  
29 student who, at the time the offense occurred, was assigned to the  
30 same campus as the student convicted or placed on deferred  
31 adjudication;

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

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

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

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

12 SECTION 3.26. Section 37.007(a), Education Code, is amended  
13 to read as follows:

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

17 (1) uses, exhibits, or possesses:

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

20 (B) an illegal knife as defined by Section  
21 46.01(6), Penal Code, or by local policy;

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

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

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

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

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

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

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

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

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

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

13 (H) criminally negligent homicide under Section  
14 19.05, Penal Code; or

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

17 (3) engages in conduct specified by Section  
18 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

19 SECTION 3.27. Section 33.009, Family Code, is amended to  
20 read as follows:

21 Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A  
22 court or the guardian ad litem or attorney ad litem for the minor  
23 shall report conduct reasonably believed to violate Section 21.02,  
24 22.011, 22.021, or 25.02, Penal Code, based on information obtained  
25 during a confidential court proceeding held under this chapter to:

26 (1) any local or state law enforcement agency;

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

30 (3) the state agency that operates, licenses,  
31 certifies, or registers the facility in which the alleged conduct

1 occurred, if the alleged conduct occurred in a facility operated,  
2 licensed, certified, or registered by a state agency; or

3 (4) an appropriate agency designated by the court.

4 SECTION 3.28. Section 33.010, Family Code, is amended to  
5 read as follows:

6 Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other  
7 law, information obtained by the Department of Family and  
8 Protective [~~and Regulatory~~] Services or another entity under  
9 Section 33.008 or 33.009 is confidential except to the extent  
10 necessary to prove a violation of Section 21.02, 22.011, 22.021, or  
11 25.02, Penal Code.

12 SECTION 3.29. Section 156.104, Family Code, is amended to  
13 read as follows:

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

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

31 SECTION 3.30. Section 161.001, Family Code, is amended to

1 read as follows:

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

5 (1) that the parent has:

6 (A) voluntarily left the child alone or in the  
7 possession of another not the parent and expressed an intent not to  
8 return;

9 (B) voluntarily left the child alone or in the  
10 possession of another not the parent without expressing an intent  
11 to return, without providing for the adequate support of the child,  
12 and remained away for a period of at least three months;

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

16 (D) knowingly placed or knowingly allowed the  
17 child to remain in conditions or surroundings which endanger the  
18 physical or emotional well-being of the child;

19 (E) engaged in conduct or knowingly placed the  
20 child with persons who engaged in conduct which endangers the  
21 physical or emotional well-being of the child;

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

25 (G) abandoned the child without identifying the  
26 child or furnishing means of identification, and the child's  
27 identity cannot be ascertained by the exercise of reasonable  
28 diligence;

29 (H) voluntarily, and with knowledge of the  
30 pregnancy, abandoned the mother of the child beginning at a time  
31 during her pregnancy with the child and continuing through the

1 birth, failed to provide adequate support or medical care for the  
2 mother during the period of abandonment before the birth of the  
3 child, and remained apart from the child or failed to support the  
4 child since the birth;

5 (I) contumaciously refused to submit to a  
6 reasonable and lawful order of a court under Subchapter D, Chapter  
7 261;

8 (J) been the major cause of:

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

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

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

17 (L) been convicted or has been placed on  
18 community supervision, including deferred adjudication community  
19 supervision, for being criminally responsible for the death or  
20 serious injury of a child under the following sections of the Penal  
21 Code or adjudicated under Title 3 for conduct that caused the death  
22 or serious injury of a child and that would constitute a violation  
23 of one of the following Penal Code sections:

24 (i) Section 19.02 (murder);

25 (ii) Section 19.03 (capital murder);

26 (iii) Section 19.04 (manslaughter);

27 (iv) Section 21.11 (indecent with a  
28 child);

29 (v) Section 22.01 (assault);

30 (vi) Section 22.011 (sexual assault);

31 (vii) Section 22.02 (aggravated assault);

1 (viii) Section 22.021 (aggravated sexual  
2 assault);

3 (ix) Section 22.04 (injury to a child,  
4 elderly individual, or disabled individual);

5 (x) Section 22.041 (abandoning or  
6 endangering child);

7 (xi) Section 25.02 (prohibited sexual  
8 conduct);

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

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

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

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

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

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

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

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

29 (O) failed to comply with the provisions of a  
30 court order that specifically established the actions necessary for  
31 the parent to obtain the return of the child who has been in the

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

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

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

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

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

15 (i) conviction of an offense; and

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

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

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

26 (T) been convicted of the murder of the other  
27 parent of the child under Section 19.02 or 19.03, Penal Code, or  
28 under a law of another state, federal law, the law of a foreign  
29 country, or the Uniform Code of Military Justice that contains  
30 elements that are substantially similar to the elements of an  
31 offense under Section 19.02 or 19.03, Penal Code; and

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

3           SECTION 3.31. Section 161.007, Family Code, is amended to  
4 read as follows:

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

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

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

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

16           SECTION 3.32. Section 261.001(1), Family Code, is amended  
17 to read as follows:

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

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

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

27           (C) physical injury that results in substantial  
28 harm to the child, or the genuine threat of substantial harm from  
29 physical injury to the child, including an injury that is at  
30 variance with the history or explanation given and excluding an  
31 accident or reasonable discipline by a parent, guardian, or

1 managing or possessory conservator that does not expose the child  
2 to a substantial risk of harm;

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

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

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

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

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

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

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

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

1           SECTION 3.33. Section 262.2015(b), Family Code, is amended  
2 to read as follows:

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

5               (1) the parent abandoned the child without  
6 identification or a means for identifying the child;

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

10              (3) the parent has engaged in conduct against the  
11 child that would constitute an offense under the following  
12 provisions of the Penal Code:

13                   (A) Section 19.02 (murder);

14                   (B) Section 19.03 (capital murder);

15                   (C) Section 19.04 (manslaughter);

16                   (D) Section 21.11 (indecent with a child);

17                   (E) Section 22.011 (sexual assault);

18                   (F) Section 22.02 (aggravated assault);

19                   (G) Section 22.021 (aggravated sexual assault);

20                   (H) Section 22.04 (injury to a child, elderly  
21 individual, or disabled individual);

22                   (I) Section 22.041 (abandoning or endangering  
23 child);

24                   (J) Section 25.02 (prohibited sexual conduct);

25                   (K) Section 43.25 (sexual performance by a  
26 child); ~~[or]~~

27                   (L) Section 43.26 (possession or promotion of  
28 child pornography); or

29                   (M) Section 21.02 (continuous sexual abuse of  
30 young child or children);

31              (4) the parent voluntarily left the child alone or in

1 the possession of another person not the parent of the child for at  
2 least six months without expressing an intent to return and without  
3 providing adequate support for the child;

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

8 (6) the parent has been convicted for:

9 (A) the murder of another child of the parent and  
10 the offense would have been an offense under 18 U.S.C. Section  
11 1111(a) if the offense had occurred in the special maritime or  
12 territorial jurisdiction of the United States;

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

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

19 (D) the felony assault of the child or another  
20 child of the parent that resulted in serious bodily injury to the  
21 child or another child of the parent; or

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

24 SECTION 3.34. Section 411.1471(a), Government Code, is  
25 amended to read as follows:

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

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

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

31 (B) Section 21.11;

- 1 (C) Section 22.011;  
2 (D) Section 22.021;  
3 (E) Section 25.02;  
4 (F) Section 30.02(d);  
5 (G) Section 43.05;  
6 (H) Section 43.25; ~~[ex]~~  
7 (I) Section 43.26; or  
8 (J) Section 21.02;

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

13 (3) convicted of an offense under Section 21.07 or  
14 21.08, Penal Code.

15 SECTION 3.35. Section 420.003(4), Government Code, is  
16 amended to read as follows:

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

20 SECTION 3.36. Section 499.027(b), Government Code, is  
21 amended to read as follows:

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

24 (1) the inmate is awaiting transfer to the  
25 institutional division, or serving a sentence, for an offense for  
26 which the judgment contains an affirmative finding under Section  
27 3g(a)(2), Article 42.12, Code of Criminal Procedure;

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

- 31 (A) Section 19.02 (murder);

1 (B) Section 19.03 (capital murder);  
2 (C) Section 19.04 (manslaughter);  
3 (D) Section 20.03 (kidnapping);  
4 (E) Section 20.04 (aggravated kidnapping);  
5 (F) Section 21.11 (indecent with a child);  
6 (G) Section 22.011 (sexual assault);  
7 (H) Section 22.02 (aggravated assault);  
8 (I) Section 22.021 (aggravated sexual assault);  
9 (J) Section 22.04 (injury to a child or an  
10 elderly individual);  
11 (K) Section 25.02 (prohibited sexual conduct);  
12 (L) Section 25.08 (sale or purchase of a child);  
13 (M) Section 28.02 (arson);  
14 (N) Section 29.02 (robbery);  
15 (O) Section 29.03 (aggravated robbery);  
16 (P) Section 30.02 (burglary), if the offense is  
17 punished as a first-degree felony under that section;  
18 (Q) Section 43.04 (aggravated promotion of  
19 prostitution);  
20 (R) Section 43.05 (compelling prostitution);  
21 (S) Section 43.24 (sale, distribution, or  
22 display of harmful material to minor);  
23 (T) Section 43.25 (sexual performance by a  
24 child);  
25 (U) Section 46.10 (deadly weapon in penal  
26 institution);  
27 (V) Section 15.01 (criminal attempt), if the  
28 offense attempted is listed in this subsection;  
29 (W) Section 15.02 (criminal conspiracy), if the  
30 offense that is the subject of the conspiracy is listed in this  
31 subsection; [~~or~~]

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

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

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

10 SECTION 3.37. Section 501.061(a), Government Code, is  
11 amended to read as follows:

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

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

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

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

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

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

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

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

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

1           (7) the inmate has not previously requested that the  
2 department perform the procedure and subsequently withdrawn the  
3 request; and

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

6           SECTION 3.38. Section 508.046, Government Code, is amended  
7 to read as follows:

8           Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on  
9 parole an inmate who was convicted of an offense under Section  
10 21.02, 21.11(a)(1), or 22.021, Penal Code, or who is required under  
11 Section 508.145(c) to serve 35 calendar years before becoming  
12 eligible for release on parole, all members of the board must vote  
13 on the release on parole of the inmate, and at least two-thirds of  
14 the members must vote in favor of the release on parole. A member of  
15 the board may not vote on the release unless the member first  
16 receives a copy of a written report from the department on the  
17 probability that the inmate would commit an offense after being  
18 released on parole.

19           SECTION 3.39. Section 508.117(g), Government Code, is  
20 amended by adding Subdivision (2-a) to read as follows:

21           (2-a) "Sexual assault" includes an offense under  
22 Section 21.02, Penal Code.

23           SECTION 3.40. Section 508.151(a), Government Code, is  
24 amended to read as follows:

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

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

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

4           SECTION 3.41. Section 508.187(a), Government Code, is  
5 amended to read as follows:

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

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

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

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

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

18           SECTION 3.42. Section 508.189(a), Government Code, is  
19 amended to read as follows:

20           (a) A parole panel shall require as a condition of parole or  
21 mandatory supervision that a releasee convicted of an offense under  
22 Section 21.02, 21.08, 21.11, 22.011, 22.021, 25.02, 43.25, or  
23 43.26, Penal Code, pay to the division a parole supervision fee of  
24 \$5 each month during the period of parole supervision.

25           SECTION 3.43. Section 242.126(c), Health and Safety Code,  
26 is amended to read as follows:

27           (c) The agency shall begin the investigation:

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

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

1 danger;

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

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

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

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

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

19 SECTION 3.44. Section 250.006(a), Health and Safety Code,  
20 is amended to read as follows:

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

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

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

29 (3) an offense under Section 21.02, Penal Code  
30 (continuous sexual abuse of young child or children), or Section  
31 21.11, Penal Code (indecent with a child);

1           (4) an offense under Section 22.011, Penal Code  
2 (sexual assault);

3           (5) an offense under Section 22.02, Penal Code  
4 (aggravated assault);

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

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

9           (8) an offense under Section 22.08, Penal Code (aiding  
10 suicide);

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

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

15          (11) an offense under Section 28.02, Penal Code  
16 (arson);

17          (12) an offense under Section 29.02, Penal Code  
18 (robbery);

19          (13) an offense under Section 29.03, Penal Code  
20 (aggravated robbery); or

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

25          SECTION 3.45. Section 841.002(8), Health and Safety Code,  
26 is amended to read as follows:

27           (8) "Sexually violent offense" means:

28           (A) an offense under Section 21.02, 21.11(a)(1),  
29 22.011, or 22.021, Penal Code;

30           (B) an offense under Section 20.04(a)(4), Penal  
31 Code, if the person committed the offense with the intent to violate

1 or abuse the victim sexually;

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

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

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

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

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

23 SECTION 3.46. Section 301.4535(a), Occupations Code, is  
24 amended to read as follows:

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

28 (1) murder under Section 19.02, Penal Code, capital  
29 murder under Section 19.03, Penal Code, or manslaughter under  
30 Section 19.04, Penal Code;

31 (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  
28 Code;

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

1           (17) an offense under the law of another state,  
2 federal law, or the Uniform Code of Military Justice that contains  
3 elements that are substantially similar to the elements of an  
4 offense listed in this subsection.

5           SECTION 3.47. Section 3.03(b), Penal Code, is amended to  
6 read as follows:

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

11           (1) an offense:

12                   (A) under Section 49.07 or 49.08, 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           (2) an offense:

21                   (A) under Section 21.02, 21.11, 22.011, 22.021,  
22 25.02, or 43.25 committed against a victim younger than 17 years of  
23 age at the time of the commission of the offense regardless of  
24 whether the accused is convicted of violations of the same section  
25 more than once or is convicted of violations of more than one  
26 section; or

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

1 section more than once or is charged with violations of more than  
2 one section; or

3 (3) an offense:

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

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

12 SECTION 3.48. Section 12.35(c), Penal Code, is amended to  
13 read as follows:

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

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

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

25 (A) under Section 21.02 or listed in Section  
26 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

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

30 SECTION 3.49. Section 15.031(b), Penal Code, is amended to  
31 read as follows:

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

10 SECTION 3.50. Section 38.17(a), Penal Code, is amended to  
11 read as follows:

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

14 (1) the actor observes the commission or attempted  
15 commission of an offense prohibited by Section 21.02 or  
16 22.021(a)(2)(B) under circumstances in which a reasonable person  
17 would believe that an offense of a sexual or assaultive nature was  
18 being committed or was about to be committed against the child;

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

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

25 ARTICLE 4. TRANSITION; EFFECTIVE DATE

26 SECTION 4.01. (a) Except as provided by Subsections (b) and  
27 (c) of this section, the change in law made by this Act applies only  
28 to an offense committed on or after September 1, 2007. An offense  
29 committed before September 1, 2007, is covered by the law in effect  
30 when the offense was committed, and the former law is continued in  
31 effect for that purpose. For the purposes of this section, an

1 offense was committed before September 1, 2007, if any element of  
2 the offense occurred before that date.

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

9 (c) The change in law made by this Act to Article 12.01, Code  
10 of Criminal Procedure, does not apply to an offense if the  
11 prosecution of that offense becomes barred by limitation before the  
12 effective date of this Act. The prosecution of that offense remains  
13 barred as if this Act had not taken effect.

14 SECTION 4.02. Notwithstanding Section 22.109, Government  
15 Code, the Texas Court of Criminal Appeals may not amend or adopt  
16 rules in conflict with Article 38.06, Code of Criminal Procedure,  
17 as added by this Act.

18 SECTION 4.03. This Act takes effect September 1, 2007.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 15, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB8** by Riddle (Relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders. ), **Committee Report 2nd House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated for the first five years following passage of the bill.</b></p>
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The bill would amend the Code of Criminal Procedure by making no limitation for felony indictments for certain cases of the offenses of sexual assault, aggravated sexual assault, and indecency with a child. The bill would also allow the presenting of felony indictments 20 years from the 18th birthday of the victim if the victim is younger than 17 years of age at the time of the offense and the offense committed is sexual performance by a child, aggravated kidnapping if the defendant committed the offense with the intent to violate or abuse the victim sexually, burglary if the offense is committed with the intent to violate or abuse the victim sexually.

The bill would amend the Code of Criminal Procedure relating to the penalty phase of a trial of a felony case relating to sexually violent offenses in which the victim of the offense is younger than 14 years of age at the time the offense was committed.

The bill would amend the Code of Criminal Procedure relating to capital felony cases. If it is shown on the trial of a sexually violent offense punishable as a felony of the first degree that the victim of the offense is punishable as a felony of the first degree and the victim of the offense is younger than 14 years of age and the defendant has previously been finally convicted of a sexually violent offense in which the victim of the offense was younger than 14 years of age, the offense would be punishable as a capital felony.

The bill would amend the Government Code by requiring the Texas Department of Criminal Justice (TDCJ) to establish a sex offender treatment program to treat inmates serving a sentence for an offense punishable under Section 12.50 or 12.42(c)(2), Penal Code, and who are not eligible for release on parole. The department would require an inmate required to undergo treatment to complete the sex offender treatment program before being released from the department. It is assumed that implementation of this provision of the bill would not result in significant cost to the State.

The bill would amend the Penal Code by setting the minimum term of imprisonment at 25 years for a sexually violent offense punishable as a felony of the first degree in which the victim is younger than 14 years of age at the time of the offense. The bill lists the offenses of sexual assault, aggravated sexual assault, sexual performance by a child, aggravated kidnapping (with intent to violate or abuse sexually), burglary (with intent to violate or abuse sexually) as sexually violent offenses.

The offense of sexual performance of a child would be punishable as a felony of the first degree if the victim is younger than 14 years of age at the time of the offense.

Given the proposal would apply to offenses committed on or after September 1, 2007, and that under current law and policy, individuals convicted of sexually violent offenses serve a very high percentage of their sentence, the full impact of this proposal will not be realized in the first five years of



implementation. Many of the provisions of the bill are not anticipated to have a significant fiscal impact because they either impact a small percentage of persons convicted of sexually violent offenses, or because under current policy and under the proposal the individuals are expected to be incarcerated for a period of time close to their maximum term (90.1%).

The provision of the bill that is expected to have the largest and most immediate impact is the provision that would set the minimum term of imprisonment to 25 years if the offense is a sexually violent offense punishable as a felony of the first degree and that the victim is younger than 14 years of age.

For fiscal year 2006, the Texas Department of Criminal Justice (TDCJ) received 1,310 admissions for the offenses of sexual performance of a child, sexual assault (of a child) and aggravated sexual assault (of a child). Based on a sample of fiscal year 2006 TDCJ intakes for the Penal Code citations listed in the bill, it is estimated that 920 (70.2%) of the 1,310 offenders committed their offense against children under the age of 14, which would set the minimum term of imprisonment to 25 years according to the bill. The 920 offenders are then placed in a simulation model that calculates the difference in sentencing and release policy based on whether the offenders are eligible according to current statute, or based on the provisions of the bill. The simulation model indicates that the impact of this particular provision of the bill would not be fully realized in the first five years following passage. The additional time served requirement of the bill would likely result in the need for an additional 3,600 beds by fiscal year 2025.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 537 State Health Services, Department of, 696 Department of Criminal Justice

**LBB Staff:** JOB, ES, GG



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 13, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB8** by Riddle (Relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.), **As Engrossed**

<b>The fiscal impact cannot be determined at this time.</b>
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**Local Government Impact**

**The fiscal impact cannot be determined at this time.**

**Source Agencies:**

**LBB Staff:** JOB, GG, ES



# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

February 20, 2007

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB8** by Riddle (Relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.), **As Introduced**

**No significant fiscal implication to the State is anticipated for the first five years following passage of the bill.**

The bill would amend the Code of Criminal Procedure by: 1) changing the statute of limitations so that a felony indictment may be presented within 20 years from the 18<sup>th</sup> birthday of the victim of a sexually violent offense, if the investigation of the offense shows that the victim is younger than 17 years of age at the time of the offense; 2) making changes in procedures in non-death penalty capital cases; and 3) providing for penalty and procedure changes if the victim of a sexually violent offense was younger than 14 at the time of the offense.

The bill would amend the Government Code by eliminating the possibility of mandatory supervision release for all persons convicted of the offense of indecency with a child and for persons convicted of a first degree felony for the offense of sexual performance by a child.

The bill would amend the Health and Safety Code by requiring a tracking service to track the locations of outpatient civil commitment patients. The tracking service would periodically provide cumulative reports of locations of the civil commitment patients to case managers.

The bill would amend the Penal Code by: 1) adding a definition for the offense of "sexually violent offense"; 2) enhance the punishment for certain repeat sexual offenses to that of a capital felony if the offenses are committed against a child younger than 14 years at the time of the offense; 3) enhance the punishment of the offense of indecency with a child punishable from a second degree to a first degree if the victim of the offense is younger than 14 years of age at the time of the offense; 4) enhance the punishment of the offense of sexual performance by a child from a second degree to a first degree if the victim of the offense is younger than 14 years of age at the time of the offense; and enhance the punishment for behavior related to the offense of sexual performance by a child, currently punishable as felony of the third degree, to a felony of the first degree if the victim of the offense is younger than 14 years of age at the time of the offense.

The Act would take effect September 1, 2007 and would only apply to offenses committed on or after that date.

Given the proposal would apply to offenses committed on or after September 1, 2007, and that under current law and policy, individuals convicted of sexually violent offenses serve a very high percentage of their sentence, the full impact of this proposal will not be realized in the first five years of implementation. Many of the provisions of the bill are not anticipated to have a significant fiscal impact because they either impact a small percentage of persons convicted of sexually violent offenses, or because under current policy and under the proposal the individuals are expected to be incarcerated for a period of time close to their maximum term (85%). The Department of State Health Services has stated that they anticipate no fiscal impact from the provision of the bill further specifying tracking services for civil commitment outpatients. The provision of the bill that is expected to have the largest and most immediate impact is the provision that would enhance the punishment of the offenses of indecency with a child, and sexual performance by a child, from a felony of the second degree to a felony of the first degree if the victim of the offense is younger than 14 years of age.

For fiscal year 2006, the Texas Department of Criminal Justice (TDCJ) received 633 offenders for the offenses of indecency with a child, and sexual performance of a child, where the offense was punishable as a felony of



the second degree. Based on a sample of fiscal year 2006 TDCJ intakes for sexually violent offenses committed against children, it is estimated that 537 (84%) of the 633 second degree offenders committed their offense against children under the age of 14 ( $633 \times 84\% = 537$ ). The 537 offenders are then placed in a discrete event simulation model that calculates the difference in sentencing and release policy based on whether the offenders are treated as second degree felons or first degree felons. The simulation model indicates that the impact of this particular provision of the bill would not be significant in the first five years following passage; however, the additional time served requirements of the bill would likely result in the need for an additional 489 beds by fiscal year 2027.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 537 State Health Services, Department of, 696 Department of Criminal Justice

**LBB Staff:** JOB, ES, GG



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**March 15, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB8** by Riddle (Relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.), **Committee Report 2nd House, Substituted**

The bill would amend the Penal Code by setting the minimum term of imprisonment at 25 years for a sexually violent offense punishable as a felony of the first degree in which the victim is younger than 14 years of age at the time of the offense. The bill lists the offenses of sexual assault, aggravated sexual assault, sexual performance by a child, aggravated kidnapping (with intent to violate or abuse sexually), burglary (with intent to violate or abuse sexually) as sexually violent offenses.

For fiscal year 2006, the Texas Department of Criminal Justice (TDCJ) received 1,310 offenders for the offenses of sexual performance of a child, sexual assault (of a child), and aggravated sexual assault (of a child). Based on a sample of fiscal year 2006 TDCJ intakes for sexually violent offenses committed against children, it is estimated that 920 (70.2%) of the 1,310 offenders committed their offense against children under the age of 14 ( $1,310 \times 70.2\% = 920$ ). In order to estimate the future impact of the proposal, the changes proposed for admission and release policy are applied in a discrete event simulation model that calculates the differences in sentencing and release policy based on whether the offenders are treated as second degree felons or first degree felons.

Fiscal Year	Increase In Demand For Prison Capacity	Decrease In Release Population
2008	0	0
2009	0	0
2010	0	0
2011	13	13
2012	16	16

Given the proposal would apply to offenses committed on or after September 1, 2007, and that under current law and policy, individuals convicted of sexually violent offenses serve a very high percentage of their sentence (90%), the full impact of this proposal will not be realized in the first five years of implementation. The simulation model indicates that the impact of these enhancement provisions of the bill would not be significant in the first five years following passage; however, the additional time served requirements of the bill would likely result in the need for an additional 3,600 beds by fiscal year 2025.

**Source Agencies:** 537 State Health Services, Department of, 696 Department of Criminal Justice

**LBB Staff:** JOB, GG



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**March 13, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB8** by Riddle (Relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.), **As Engrossed**

The probable impact from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes cannot be determined at this time.

**Source Agencies:**

**LBB Staff:** JOB, GG



LEGISLATIVE BUDGET BOARD  
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

80TH LEGISLATIVE REGULAR SESSION

February 20, 2007

TO: Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB8** by Riddle (Relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.), **As Introduced**

The provisions of the bill that are the subject of this analysis would amend the Penal Code by enhancing the punishment of the offense of indecency with a child and the offense of sexual performance by a child. The punishment for the offense of indecency with a child would be enhanced from a felony of the second degree to a felony of the first degree if the victim of the offense is younger than 14 years of age at the time of the offense. The punishment for the offense of sexual performance by a child would be enhanced from a felony of the second degree, or a felony of the third degree, to a felony of the first degree if the victim of the offense is younger than 14 years of age at the time of the offense.

A third degree felony is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A second degree felony is punishable by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A first degree felony is punishable by imprisonment in the institutional division for life or for any term of not more than 99 years or less than 5 years, or in addition to imprisonment, a fine not to exceed \$10,000.

For fiscal year 2006, the Texas Department of Criminal Justice (TDCJ) received 633 offenders for the offenses of indecency with a child, and sexual performance of a child. Based on a sample of fiscal year 2006 TDCJ intakes for sexually violent offenses committed against children, it is estimated that 537 (84%) of the 633 second degree offenders committed their offense against children under the age of 14 ( $633 \times 84\% = 537$ ). In order to estimate the future impact of the proposal, the changes proposed for admission and release policy are applied in a discrete event simulation model that calculates the differences in sentencing and release policy based on whether the offenders are treated as second degree felons or first degree felons.

Fiscal Year	Increase In Demand For Prison Capacity	Decrease In Release Population
2008	0	0
2009	0	0
2010	9	9
2011	27	27
2012	56	56

Given the proposal would apply to offenses committed on or after September 1, 2007, and that under current law and policy, individuals convicted of sexually violent offenses serve a very high percentage of their sentence (85%), the full impact of this proposal will not be realized in the first five years of implementation. The simulation model indicates that the impact of these enhancement provisions of the bill would not be significant in the first five years following passage; however, the additional time served requirements of the bill would likely result in the need for an additional 489 beds by fiscal year 2027.

Source Agencies: 537 State Health Services, Department of, 696 Department of Criminal Justice



**LBB Staff:** JOB, GG

