

1-1 By: Raymond (Senate Sponsor - Zaffirini) H.B. No. 549  
1-2 (In the Senate - Received from the House April 27, 2009;  
1-3 May 1, 2009, read first time and referred to Committee on Criminal  
1-4 Justice; May 14, 2009, reported favorably by the following vote:  
1-5 Yeas 7, Nays 0; May 14, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to an affirmative defense to prosecution for certain sex  
1-9 offenses.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 21.11, Penal Code, is amended by  
1-12 amending Subsection (a) and adding Subsection (b-1) to read as  
1-13 follows:

1-14 (a) A person commits an offense if, with a child younger  
1-15 than 17 years of age [~~and not the person's spouse~~], whether the  
1-16 child is of the same or opposite sex, the person:

1-17 (1) engages in sexual contact with the child or causes  
1-18 the child to engage in sexual contact; or

1-19 (2) with intent to arouse or gratify the sexual desire  
1-20 of any person:

1-21 (A) exposes the person's anus or any part of the  
1-22 person's genitals, knowing the child is present; or

1-23 (B) causes the child to expose the child's anus  
1-24 or any part of the child's genitals.

1-25 (b-1) It is an affirmative defense to prosecution under this  
1-26 section that the actor was the spouse of the child at the time of  
1-27 the offense.

1-28 SECTION 2. Section 21.12, Penal Code, is amended by  
1-29 amending Subsection (a) and adding Subsection (b-1) to read as  
1-30 follows:

1-31 (a) An employee of a public or private primary or secondary  
1-32 school commits an offense if the employee engages in:

1-33 (1) sexual contact, sexual intercourse, or deviate  
1-34 sexual intercourse with a person who is enrolled in a public or  
1-35 private primary or secondary school at which the employee works  
1-36 [~~and who is not the employee's spouse~~]; or

1-37 (2) conduct described by Section 33.021, with a person  
1-38 described by Subdivision (1), regardless of the age of that person.

1-39 (b-1) It is an affirmative defense to prosecution under this  
1-40 section that the actor was the spouse of the enrolled person at the  
1-41 time of the offense.

1-42 SECTION 3. Section 22.011(c)(1), Penal Code, is amended to  
1-43 read as follows:

1-44 (1) "Child" means a person younger than 17 years of age  
1-45 [~~who is not the spouse of the actor~~].

1-46 SECTION 4. Section 22.011(e), Penal Code, is amended to  
1-47 read as follows:

1-48 (e) It is an affirmative defense to prosecution under  
1-49 Subsection (a)(2):

1-50 (1) that the actor was the spouse of the child at the  
1-51 time of the offense; or

1-52 (2) that:

1-53 (A) [(1)] the actor was not more than three years  
1-54 older than the victim and at the time of the offense:

1-55 (i) [(A)] was not required under Chapter  
1-56 62, Code of Criminal Procedure, to register for life as a sex  
1-57 offender; or

1-58 (ii) [(B)] was not a person who under  
1-59 Chapter 62, Code of Criminal Procedure, had a reportable conviction  
1-60 or adjudication for an offense under this section; and

1-61 (B) [(2)] the victim:

1-62 (i) [(A)] was a child of 14 years of age or  
1-63 older; and

1-64 (ii) [(B)] was not a person whom the actor

2-1 was prohibited from marrying or purporting to marry or with whom the  
2-2 actor was prohibited from living under the appearance of being  
2-3 married under Section 25.01.

2-4 SECTION 5. Section 39.04, Penal Code, is amended by  
2-5 amending Subsection (f) and adding Subsection (h) to read as  
2-6 follows:

2-7 (f) An employee of the Texas Department of Criminal Justice,  
2-8 the Texas Youth Commission, or a local juvenile probation  
2-9 department commits an offense if the employee engages in sexual  
2-10 contact, sexual intercourse, or deviate sexual intercourse with an  
2-11 individual [~~who is not the employee's spouse and~~] who the employee  
2-12 knows is under the supervision of the department, commission, or  
2-13 probation department but not in the custody of the department,  
2-14 commission, or probation department.

2-15 (h) It is an affirmative defense to prosecution under  
2-16 Subsection (f) that the actor was the spouse of the individual at  
2-17 the time of the offense.

2-18 SECTION 6. The change in law made by this Act applies only  
2-19 to an offense committed on or after the effective date of this Act.  
2-20 An offense committed before the effective date of this Act is  
2-21 covered by the law in effect when the offense was committed, and the  
2-22 former law is continued in effect for that purpose. For purposes of  
2-23 this section, an offense was committed before the effective date of  
2-24 this Act if any element of the offense occurred before that date.

2-25 SECTION 7. This Act takes effect September 1, 2009.

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