

By: Pitts

H.B. No. 1482

Substitute the following for H.B. No. 1482:

By: Fletcher

C.S.H.B. No. 1482

A BILL TO BE ENTITLED

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

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

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

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

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

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

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

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

1 (c) An offense under this section is:

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (2) the victim:

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

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

10 (f) If conduct constituting an offense under this section
11 also constitutes an offense under another section of this code, the
12 actor may be prosecuted under either section or under both
13 sections.

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

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

20 (1) an offense:

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

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

1 charged with violations of both sections;

2 (2) an offense:

3 (A) under Section 33.021 or an offense under
4 Section 21.02, 21.11, 22.011, 22.021, 22.03(a)(3), 25.02, or 43.25
5 committed against a victim younger than 17 years of age at the time
6 of the commission of the offense regardless of whether the accused
7 is convicted of violations of the same section more than once or is
8 convicted of violations of more than one section; or

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

16 (3) an offense:

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

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

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

27 (2) Notwithstanding Subdivision (1), a defendant

1 shall be punished by imprisonment in the Texas Department of
2 Criminal Justice for life if:

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

4 (i) under Section 21.11(a)(1), 22.021, or
5 22.011[~~Penal Code~~];

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

9 (iii) under Section 30.02[~~Penal Code~~],
10 punishable under Subsection (d) of that section, if the defendant
11 committed the offense with the intent to commit a felony described
12 by Subparagraph (i) or (ii) or a felony under Section 21.11 or
13 22.03(a)(2) or (3)[~~Penal Code~~]; and

14 (B) the defendant has been previously convicted
15 of an offense:

16 (i) under Section 43.25 or 43.26[~~Penal~~
17 ~~Code~~] or an offense under Section 43.23[~~Penal Code~~] punishable
18 under Subsection (h) of that section;

19 (ii) under Section 21.02, 21.11, 22.011,
20 22.021, 22.03(a)(2) or (3), or 25.02[~~Penal Code~~];

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

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

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

4 SECTION 4. Section 15.031(b), Penal Code, is amended to
5 read as follows:

6 (b) A person commits an offense if, with intent that an
7 offense under Section 21.02, 21.11, 22.011, 22.021, 22.03(a)(2) or
8 (3), or 43.25 be committed, the person by any means requests,
9 commands, or attempts to induce a minor or another whom the person
10 believes to be a minor to engage in specific conduct that, under the
11 circumstances surrounding the actor's conduct as the actor believes
12 them to be, would constitute an offense under one of those sections
13 or would make the minor or other believed by the person to be a minor
14 a party to the commission of an offense under one of those sections.

15 SECTION 5. Section 22.06(a), Penal Code, is amended to read
16 as follows:

17 (a) The victim's effective consent or the actor's reasonable
18 belief that the victim consented to the actor's conduct is a defense
19 to prosecution under Section 22.01 (Assault), 22.02 (Aggravated
20 Assault), 22.03(a)(1) (Assault with Bodily Fluids), or 22.05
21 (Deadly Conduct) if:

22 (1) the conduct did not threaten or inflict serious
23 bodily injury; or

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

25 (A) his occupation;

26 (B) recognized medical treatment; or

27 (C) a scientific experiment conducted by

1 recognized methods.

2 SECTION 6. Article 21.31(a), Code of Criminal Procedure, is
3 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~~]
6 22.021, or 22.03(a)(2) or (3), Penal Code, shall, at the direction
7 of the court, undergo a medical procedure or test designed to show
8 or help show whether the person has a sexually transmitted disease
9 or has acquired immune deficiency syndrome (AIDS) or human
10 immunodeficiency virus (HIV) infection, antibodies to HIV, or
11 infection with any other probable causative agent of AIDS. The
12 court may direct the person to undergo the procedure or test on its
13 own motion or on the request of the victim of the alleged offense.
14 If the person refuses to submit voluntarily to the procedure or
15 test, the court shall require the person to submit to the procedure
16 or test. The court may require a defendant previously required
17 under this article to undergo a medical procedure or test on
18 indictment for an offense to undergo a subsequent medical procedure
19 or test following conviction of the offense. The person performing
20 the procedure or test shall make the test results available to the
21 local health authority, and the local health authority shall be
22 required to make the notification of the test result to the victim
23 of the alleged offense and to the defendant.

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

26 Sec. 1. This article applies only to a hearing or proceeding
27 in which the court determines that a child younger than 13 years of

1 age would be unavailable to testify in the presence of the defendant
2 about an offense defined by any of the following sections of the
3 Penal Code:

- 4 (1) Section 19.02 (Murder);
- 5 (2) Section 19.03 (Capital Murder);
- 6 (3) Section 19.04 (Manslaughter);
- 7 (4) Section 20.04 (Aggravated Kidnapping);
- 8 (5) Section 21.11 (Indecency with a Child);
- 9 (6) Section 22.011 (Sexual Assault);
- 10 (7) Section 22.02 (Aggravated Assault);
- 11 (8) Section 22.021 (Aggravated Sexual Assault);
- 12 (9) Section 22.03(a)(3) (Assault with Bodily Fluids);
- 13 (10) Section 22.04(e) (Injury to a Child, Elderly
14 Individual, or Disabled Individual);
- 15 (11) [~~(10)~~] Section 22.04(f) (Injury to a Child,
16 Elderly Individual, or Disabled Individual), if the conduct is
17 committed intentionally or knowingly;
- 18 (12) [~~(11)~~] Section 25.02 (Prohibited Sexual
19 Conduct);
- 20 (13) [~~(12)~~] Section 29.03 (Aggravated Robbery);
- 21 (14) [~~(13)~~] Section 43.25 (Sexual Performance by a
22 Child); or
- 23 (15) [~~(14)~~] Section 21.02 (Continuous Sexual Abuse of
24 Young Child or Children).

25 SECTION 8. Section 3g(a), Article 42.12, Code of Criminal
26 Procedure, as amended by Chapters 405 (S.B. 877) and 593 (H.B. 8),
27 Acts of the 80th Legislature, Regular Session, 2007, is reenacted

1 and amended to read as follows:

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

4 (1) to a defendant adjudged guilty of an offense
5 under:

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

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

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

10 (D) Section 20.04, Penal Code (Aggravated
11 kidnapping);

12 (E) Section 22.021, Penal Code (Aggravated
13 sexual assault);

14 (F) Section 29.03, Penal Code (Aggravated
15 robbery);

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

18 (i) Section 481.140, Health and Safety
19 Code; or

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

24 (H) Section 22.011, Penal Code (Sexual assault);

25 [~~or~~]

26 (I) Section 22.04(a)(1), Penal Code (Injury to a
27 child, elderly individual, or disabled individual), if the offense

1 is punishable as a felony of the first degree and the victim of the
2 offense is a child; ~~or~~

3 (J) ~~[(I)]~~ Section 43.25, Penal Code (Sexual
4 performance by a child); or

5 (K) Section 22.03(a)(2) or (3), Penal Code
6 (Assault with bodily fluids); or

7 (2) to a defendant when it is shown that a deadly
8 weapon as defined in Section 1.07, Penal Code, was used or exhibited
9 during the commission of a felony offense or during immediate
10 flight therefrom, and that the defendant used or exhibited the
11 deadly weapon or was a party to the offense and knew that a deadly
12 weapon would be used or exhibited. On an affirmative finding under
13 this subdivision, the trial court shall enter the finding in the
14 judgment of the court. On an affirmative finding that the deadly
15 weapon was a firearm, the court shall enter that finding in its
16 judgment.

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

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

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

22 (A) under Sections 49.04-49.08, Penal Code; or

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

1 (2) the defendant:

2 (A) is charged with an offense under Section
3 21.11, 22.011, ~~[or]~~ 22.021, or 22.03(a)(2) or (3), Penal Code,
4 regardless of the age of the victim, or any other ~~[a]~~ felony
5 described by Section 13B(b) of this article; and

6 (B) has previously been placed on community
7 supervision for any offense under Paragraph (A) of this
8 subdivision; or

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

10 (A) Section 21.02, Penal Code; or

11 (B) Section 22.021, Penal Code, that is
12 punishable under Subsection (f) of that section or under Section
13 12.42(c)(3), Penal Code.

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

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

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

19 (2) under Section 21.08, 21.11, 22.011, 22.021,
20 22.03(a)(3), or 25.02, Penal Code;

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

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

1 SECTION 11. Article 62.001(5), Code of Criminal Procedure,
2 is amended to read as follows:

3 (5) "Reportable conviction or adjudication" means a
4 conviction or adjudication, including an adjudication of
5 delinquent conduct or a deferred adjudication, that, regardless of
6 the pendency of an appeal, is a conviction for or an adjudication
7 for or based on:

8 (A) a violation of Section 21.02 (Continuous
9 sexual abuse of young child or children), 21.11 (Indecency with a
10 child), 22.011 (Sexual assault), 22.021 (Aggravated sexual
11 assault), 22.03(a)(2) or (3) (Assault with bodily fluids), or 25.02
12 (Prohibited sexual conduct), Penal Code;

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

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

20 (D) a violation of Section 30.02 (Burglary),
21 Penal Code, if the offense or conduct is punishable under
22 Subsection (d) of that section and the actor committed the offense
23 or engaged in the conduct with intent to commit a felony listed in
24 Paragraph (A) or (C);

25 (E) a violation of Section 20.02 (Unlawful
26 restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping),
27 Penal Code, if, as applicable:

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

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

6 (F) the second violation of Section 21.08
7 (Indecent exposure), Penal Code, but not if the second violation
8 results in a deferred adjudication;

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

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

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

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

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

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

3 (A) an offense under Section 21.02 (Continuous
4 sexual abuse of young child or children), 21.11(a)(1) (Indecency
5 with a child), 22.011 (Sexual assault), ~~[or]~~ 22.021 (Aggravated
6 sexual assault), or 22.03(a)(2) or (3) (Assault with bodily
7 fluids), Penal Code;

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

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

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

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

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

25 (a) A person convicted of an offense under Section 21.02,
26 21.11, 22.011(a)(2), 22.021(a)(1)(B), 22.03(a)(3), 43.25, 43.251,
27 or 43.26, Penal Code, shall pay \$100 on conviction of the offense.

1 SECTION 14. Section 25.0341(a), Education Code, is amended
2 to read as follows:

3 (a) This section applies only to:

4 (1) a student:

5 (A) who has been convicted of continuous sexual
6 abuse of young child or children under Section 21.02, Penal Code, or
7 convicted of or placed on deferred adjudication for the offense of
8 sexual assault under Section 22.011, Penal Code, ~~or~~ aggravated
9 sexual assault under Section 22.021, Penal Code, or assault with
10 bodily fluids under Section 22.03(a)(2) or (3), Penal Code,
11 committed against another student who, at the time the offense
12 occurred, was assigned to the same campus as the student convicted
13 or placed on deferred adjudication;

14 (B) who has been adjudicated under Section 54.03,
15 Family Code, as having engaged in conduct described by Paragraph
16 (A);

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

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

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

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

27 (a) A student shall be expelled from a school if the

1 student, on school property or while attending a school-sponsored
2 or school-related activity on or off of school property:

3 (1) uses, exhibits, or possesses:

4 (A) a firearm as defined by Section 46.01(3),
5 Penal Code;

6 (B) an illegal knife as defined by Section
7 46.01(6), Penal Code, or by local policy;

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

10 (D) a weapon listed as a prohibited weapon under
11 Section 46.05, Penal Code;

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

14 (A) aggravated assault under Section 22.02,
15 Penal Code, sexual assault under Section 22.011, Penal Code, or
16 aggravated sexual assault under Section 22.021, Penal Code;

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

18 (C) murder under Section 19.02, Penal Code,
19 capital murder under Section 19.03, Penal Code, or criminal
20 attempt, under Section 15.01, Penal Code, to commit murder or
21 capital murder;

22 (D) indecency with a child under Section 21.11,
23 Penal Code;

24 (E) aggravated kidnapping under Section 20.04,
25 Penal Code;

26 (F) aggravated robbery under Section 29.03,
27 Penal Code;

1 (G) manslaughter under Section 19.04, Penal
2 Code;

3 (H) criminally negligent homicide under Section
4 19.05, Penal Code; ~~[or]~~

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

7 (J) assault with bodily fluids under Section
8 22.03(a)(2) or (3), Penal Code; or

9 (3) engages in conduct specified by Section
10 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

11 SECTION 16. Section 33.009, Family Code, is amended to read
12 as follows:

13 Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A
14 court or the guardian ad litem or attorney ad litem for the minor
15 shall report conduct reasonably believed to violate Section 21.02,
16 22.011, 22.021, 22.03(a)(3), or 25.02, Penal Code, based on
17 information obtained during a confidential court proceeding held
18 under this chapter to:

19 (1) any local or state law enforcement agency;

20 (2) the Department of Family and Protective Services,
21 if the alleged conduct involves a person responsible for the care,
22 custody, or welfare of the child;

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

27 (4) an appropriate agency designated by the court.

1 SECTION 17. Section 33.010, Family Code, is amended to read
2 as follows:

3 Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other
4 law, information obtained by the Department of Family and
5 Protective Services or another entity under Section 33.008 or
6 33.009 is confidential except to the extent necessary to prove a
7 violation of Section 21.02, 22.011, 22.021, 22.03(a)(3), or 25.02,
8 Penal Code.

9 SECTION 18. Section 156.104, Family Code, is amended to
10 read as follows:

11 Sec. 156.104. MODIFICATION OF ORDER ON CONVICTION FOR CHILD
12 ABUSE; PENALTY. (a) Except as provided by Section 156.1045, the
13 conviction of a conservator for an offense under Section 21.02,
14 Penal Code, or the conviction of a conservator or an order deferring
15 adjudication with regard to the conservator, for an offense
16 involving the abuse of a child under Section 21.11, 22.011, [~~or~~
17 22.021, or 22.03(a)(3)], Penal Code, is a material and substantial
18 change of circumstances sufficient to justify a temporary order and
19 modification of an existing court order or portion of a decree that
20 provides for the appointment of a conservator or that sets the terms
21 and conditions of conservatorship or for the possession of or
22 access to a child.

23 (b) A person commits an offense if the person files a suit to
24 modify an order or portion of a decree based on the grounds
25 permitted under Subsection (a) and the person knows that the person
26 against whom the motion is filed has not been convicted of an
27 offense, or received deferred adjudication for an offense, under

1 Section 21.02, 21.11, 22.011, [~~or~~] 22.021, or 22.03(a)(3), Penal
2 Code. An offense under this subsection is a Class B misdemeanor.

3 SECTION 19. Section 161.001, Family Code, is amended to
4 read as follows:

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

8 (1) that the parent has:

9 (A) voluntarily left the child alone or in the
10 possession of another not the parent and expressed an intent not to
11 return;

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

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

19 (D) knowingly placed or knowingly allowed the
20 child to remain in conditions or surroundings which endanger the
21 physical or emotional well-being of the child;

22 (E) engaged in conduct or knowingly placed the
23 child with persons who engaged in conduct which endangers the
24 physical or emotional well-being of the child;

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

1 (G) abandoned the child without identifying the
2 child or furnishing means of identification, and the child's
3 identity cannot be ascertained by the exercise of reasonable
4 diligence;

5 (H) voluntarily, and with knowledge of the
6 pregnancy, abandoned the mother of the child beginning at a time
7 during her pregnancy with the child and continuing through the
8 birth, failed to provide adequate support or medical care for the
9 mother during the period of abandonment before the birth of the
10 child, and remained apart from the child or failed to support the
11 child since the birth;

12 (I) contumaciously refused to submit to a
13 reasonable and lawful order of a court under Subchapter D, Chapter
14 261;

15 (J) been the major cause of:

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

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

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

24 (L) been convicted or has been placed on
25 community supervision, including deferred adjudication community
26 supervision, for being criminally responsible for the death or
27 serious injury of a child under the following sections of the Penal

1 Code or adjudicated under Title 3 for conduct that caused the death
2 or serious injury of a child and that would constitute a violation
3 of one of the following Penal Code sections:

4 (i) Section 19.02 (murder);
5 (ii) Section 19.03 (capital murder);
6 (iii) Section 19.04 (manslaughter);
7 (iv) Section 21.11 (indecent with a
8 child);

9 (v) Section 22.01 (assault);
10 (vi) Section 22.011 (sexual assault);
11 (vii) Section 22.02 (aggravated assault);
12 (viii) Section 22.021 (aggravated sexual
13 assault);

14 (ix) Section 22.03(a)(3) (assault with
15 bodily fluids);

16 (x) Section 22.04 (injury to a child, elderly
17 individual, or disabled individual);

18 (xi) [~~x~~] Section 22.041 (abandoning or
19 endangering child);

20 (xii) [~~xii~~] Section 25.02 (prohibited
21 sexual conduct);

22 (xiii) [~~xiii~~] Section 43.25 (sexual
23 performance by a child);

24 (xiv) [~~xiii~~] Section 43.26 (possession or
25 promotion of child pornography); and

26 (xv) [~~xiv~~] Section 21.02 (continuous
27 sexual abuse of young child or children);

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

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

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

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

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

15 (O) failed to comply with the provisions of a
16 court order that specifically established the actions necessary for
17 the parent to obtain the return of the child who has been in the
18 permanent or temporary managing conservatorship of the Department
19 of Family and Protective Services for not less than nine months as a
20 result of the child's removal from the parent under Chapter 262 for
21 the abuse or neglect of the child;

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

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

27 (ii) after completion of a court-ordered

1 substance abuse treatment program, continued to abuse a controlled
2 substance;

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

5 (i) conviction of an offense; and

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

9 (R) been the cause of the child being born
10 addicted to alcohol or a controlled substance, other than a
11 controlled substance legally obtained by prescription, as defined
12 by Section 261.001;

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

16 (T) been convicted of the murder of the other
17 parent of the child under Section 19.02 or 19.03, Penal Code, or
18 under a law of another state, federal law, the law of a foreign
19 country, or the Uniform Code of Military Justice that contains
20 elements that are substantially similar to the elements of an
21 offense under Section 19.02 or 19.03, Penal Code; and

22 (2) that termination is in the best interest of the
23 child.

24 SECTION 20. Section 161.007, Family Code, is amended to
25 read as follows:

26 Sec. 161.007. TERMINATION WHEN PREGNANCY RESULTS FROM
27 CRIMINAL ACT. The court may order the termination of the

1 parent-child relationship of a parent and a child if the court finds
2 that:

3 (1) the parent has been convicted of an offense
4 committed under Section 21.02, 22.011, 22.021, 22.03(a)(3), or
5 25.02, Penal Code;

6 (2) as a direct result of the commission of the offense
7 by the parent, the victim of the offense became pregnant with the
8 parent's child; and

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

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

12 (1) "Abuse" includes the following acts or omissions
13 by a person:

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

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

21 (C) physical injury that results in substantial
22 harm to the child, or the genuine threat of substantial harm from
23 physical injury to the child, including an injury that is at
24 variance with the history or explanation given and excluding an
25 accident or reasonable discipline by a parent, guardian, or
26 managing or possessory conservator that does not expose the child
27 to a substantial risk of harm;

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

4 (E) sexual conduct harmful to a child's mental,
5 emotional, or physical welfare, including conduct that constitutes
6 the offense of continuous sexual abuse of young child or children
7 under Section 21.02, Penal Code, indecency with a child under
8 Section 21.11, Penal Code, sexual assault under Section 22.011,
9 Penal Code, ~~or~~ aggravated sexual assault under Section 22.021,
10 Penal Code, or assault with bodily fluids under Section
11 22.03(a)(3), Penal Code;

12 (F) failure to make a reasonable effort to
13 prevent sexual conduct harmful to a child;

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

16 (H) causing, permitting, encouraging, engaging
17 in, or allowing the photographing, filming, or depicting of the
18 child if the person knew or should have known that the resulting
19 photograph, film, or depiction of the child is obscene as defined by
20 Section 43.21, Penal Code, or pornographic;

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

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

1 (K) causing, permitting, encouraging, engaging
2 in, or allowing a sexual performance by a child as defined by
3 Section 43.25, Penal Code.

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

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

8 (1) the parent abandoned the child without
9 identification or a means for identifying the child;

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

13 (3) the parent has engaged in conduct against the
14 child that would constitute an offense under the following
15 provisions of the Penal Code:

16 (A) Section 19.02 (murder);

17 (B) Section 19.03 (capital murder);

18 (C) Section 19.04 (manslaughter);

19 (D) Section 21.11 (indecent with a child);

20 (E) Section 22.011 (sexual assault);

21 (F) Section 22.02 (aggravated assault);

22 (G) Section 22.021 (aggravated sexual assault);

23 (H) Section 22.03(a)(3) (assault with bodily
24 fluids);

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

27 (J) [~~(I)~~] Section 22.041 (abandoning or

1 endangering child);

2 (K) [~~(J)~~] Section 25.02 (prohibited sexual
3 conduct);

4 (L) [~~(K)~~] Section 43.25 (sexual performance by a
5 child);

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

8 (N) [~~(M)~~] Section 21.02 (continuous sexual abuse
9 of young child or children);

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

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

18 (6) the parent has been convicted for:

19 (A) the murder of another child of the parent and
20 the offense would have been an offense under 18 U.S.C. Section
21 1111(a) if the offense had occurred in the special maritime or
22 territorial jurisdiction of the United States;

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

27 (C) aiding or abetting, attempting, conspiring,

1 or soliciting an offense under Subdivision (A) or (B); or

2 (D) the felony assault of the child or another
3 child of the parent that resulted in serious bodily injury to the
4 child or another child of the parent; or

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

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

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

10 (1) indicted or waives indictment for a felony
11 prohibited or punishable under any of the following Penal Code
12 sections:

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

14 (B) Section 21.11;

15 (C) Section 22.011;

16 (D) Section 22.021;

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

18 (F) Section 25.02;

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

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

21 (I) [~~(H)~~] Section 43.25;

22 (J) [~~(I)~~] Section 43.26; or

23 (K) [~~(J)~~] Section 21.02;

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

1 (3) convicted of an offense under Section 21.07 or
2 21.08, Penal Code.

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

5 (4) "Sexual assault" means any act or attempted act as
6 described by Section 21.02, 21.11, 22.011, 22.021, 22.03(a)(2) or
7 (3), or 25.02, Penal Code.

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

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

12 (1) the inmate has been convicted of an offense under
13 Section 21.02, 21.11, 22.011(a)(2), [~~or~~] 22.021(a)(2)(B), or
14 22.03(a)(3), Penal Code, and has previously been convicted under
15 one or more of those sections;

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

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

18 (4) the inmate signs a statement admitting the inmate
19 committed the offense described by Subsection (a)(1) for which the
20 inmate has been convicted;

21 (5) a psychiatrist and a psychologist who are
22 appointed by the department and have experience in the treatment of
23 sex offenders:

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

26 (B) counsel the inmate before the inmate
27 undergoes the procedure;

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

3 (7) the inmate has not previously requested that the
4 department perform the procedure and subsequently withdrawn the
5 request; and

6 (8) the inmate consults with a monitor as provided by
7 Subsection (f).

8 SECTION 26. Section 508.046, Government Code, is amended to
9 read as follows:

10 Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on
11 parole an inmate who was convicted of an offense under Section
12 21.02, 21.11(a)(1), [~~or~~] 22.021, or 22.03(a)(3), Penal Code, or who
13 is required under Section 508.145(c) to serve 35 calendar years
14 before becoming eligible for release on parole, all members of the
15 board must vote on the release on parole of the inmate, and at least
16 two-thirds of the members must vote in favor of the release on
17 parole. A member of the board may not vote on the release unless the
18 member first receives a copy of a written report from the department
19 on the probability that the inmate would commit an offense after
20 being released on parole.

21 SECTION 27. Section 508.145(d), Government Code, is amended
22 to read as follows:

23 (d) An inmate serving a sentence for an offense described by
24 Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), [~~or~~] (I), (J), or
25 (K), Article 42.12, Code of Criminal Procedure, or for an offense
26 for which the judgment contains an affirmative finding under
27 Section 3g(a)(2) of that article, is not eligible for release on

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

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

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

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

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

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

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

19 (5) an offense under Section 21.11, Penal Code;

20 (6) a felony under Section 22.011, 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

1 Code;

2 (11) a second degree felony under Section 29.02, Penal

3 Code;

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

5 Code;

6 (13) a first degree felony under Section 30.02, Penal

7 Code;

8 (14) a felony for which the punishment is increased

9 under Section 481.134 or Section 481.140, Health and Safety Code;

10 (15) an offense under Section 43.25, Penal Code; ~~or~~

11 (16) an offense under Section 21.02, Penal Code; or

12 (17) a felony under Section 22.03, Penal Code.

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

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

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

18 (2) Section 21.02, 21.11, 22.011, 22.021,
19 22.03(a)(3), or 25.02, Penal Code;

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

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

27 SECTION 30. Section 508.189(a), Government Code, is amended

1 to read as follows:

2 (a) A parole panel shall require as a condition of parole or
3 mandatory supervision that a releasee convicted of an offense under
4 Section 21.02, 21.08, 21.11, 22.011, 22.021, 22.03(a)(2) or (3),
5 25.02, 43.25, or 43.26, Penal Code, pay to the division a parole
6 supervision fee of \$5 each month during the period of parole
7 supervision.

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

10 (c) The agency shall begin the investigation:

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

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

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

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

22 (D) a resident has been a victim of any act or
23 attempted act described by Section 21.02, 21.11, 22.011, [~~or~~]
24 22.021, or 22.03(a)(2) or (3), Penal Code; or

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

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

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

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

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

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

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

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

21 (5) an offense under Section 22.02, Penal Code
22 (aggravated assault), or Section 22.03(a)(2) or (3), Penal Code
23 (assault with bodily fluids);

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

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

- 1 (8) an offense under Section 22.08, Penal Code (aiding
2 suicide);
- 3 (9) an offense under Section 25.031, Penal Code
4 (agreement to abduct from custody);
- 5 (10) an offense under Section 25.08, Penal Code (sale
6 or purchase of a child);
- 7 (11) an offense under Section 28.02, Penal Code
8 (arson);
- 9 (12) an offense under Section 29.02, Penal Code
10 (robbery);
- 11 (13) an offense under Section 29.03, Penal Code
12 (aggravated robbery);
- 13 (14) an offense under Section 21.08, Penal Code
14 (indecent exposure);
- 15 (15) an offense under Section 21.12, Penal Code
16 (improper relationship between educator and student);
- 17 (16) an offense under Section 21.15, Penal Code
18 (improper photography or visual recording);
- 19 (17) an offense under Section 22.05, Penal Code
20 (deadly conduct);
- 21 (18) an offense under Section 22.021, Penal Code
22 (aggravated sexual assault);
- 23 (19) an offense under Section 22.07, Penal Code
24 (terroristic threat);
- 25 (20) an offense under Section 33.021, Penal Code
26 (online solicitation of a minor);
- 27 (21) an offense under Section 34.02, Penal Code (money

1 laundering);

2 (22) an offense under Section 35A.02, Penal Code
3 (Medicaid fraud);

4 (23) an offense under Section 42.09, Penal Code
5 (cruelty to animals); or

6 (24) a conviction under the laws of another state,
7 federal law, or the Uniform Code of Military Justice for an offense
8 containing elements that are substantially similar to the elements
9 of an offense listed by this subsection.

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

12 (8) "Sexually violent offense" means:

13 (A) an offense under Section 21.02, 21.11(a)(1),
14 22.011, ~~or~~ 22.021, or 22.03(a)(2) or (3), Penal Code;

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

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

22 (D) an offense under Section 19.02 or 19.03,
23 Penal Code, that, during the guilt or innocence phase or the
24 punishment phase for the offense, during the adjudication or
25 disposition of delinquent conduct constituting the offense, or
26 subsequently during a civil commitment proceeding under Subchapter
27 D, is determined beyond a reasonable doubt to have been based on

1 sexually motivated conduct;

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

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

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

12 SECTION 34. (a) Except as provided by Subsection (b) of
13 this section, the change in law made by this Act applies only to an
14 offense committed on or after the effective date of this Act. An
15 offense committed before the effective date of this Act is governed
16 by the law in effect when the offense was committed, and the former
17 law is continued in effect for that purpose. For purposes of this
18 subsection, an offense was committed before the effective date of
19 this Act if any element of the offense was committed before that
20 date.

21 (b) The change in law made by this Act to Section 841.002,
22 Health and Safety Code, applies only to an individual who on or
23 after the effective date of this Act is serving a sentence in the
24 Texas Department of Criminal Justice or is committed to the
25 Department of State Health Services or the Department of Aging and
26 Disability Services for an offense committed before, on, or after
27 the effective date of this Act.

1 SECTION 35. To the extent of any conflict, this Act prevails
2 over another Act of the 81st Legislature, Regular Session, 2009,
3 relating to nonsubstantive additions to and corrections in enacted
4 codes.

5 SECTION 36. This Act takes effect September 1, 2009.