

By: Thompson of Harris, Dutton

H.B. No. 3326

Substitute the following for H.B. No. 3326:

By: Herrero

C.S.H.B. No. 3326

A BILL TO BE ENTITLED

1 AN ACT

2 relating to decreasing the punishment for certain criminal  
3 offenses.

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

5 SECTION 1. Section 502.001(c), Business & Commerce Code, is  
6 amended to read as follows:

7 (c) A restaurant or bar owner shall display in a prominent  
8 place on the premises of the restaurant or bar a sign stating in  
9 letters at least one-half inch high: "UNDER SECTION 32.51, PENAL  
10 CODE, IT IS A CLASS A MISDEMEANOR [~~STATE JAIL FELONY~~] (PUNISHABLE BY  
11 CONFINEMENT IN [~~A STATE~~] JAIL FOR NOT MORE THAN ONE YEAR) [~~TWO~~  
12 ~~YEARS~~] TO OBTAIN, POSSESS, TRANSFER, OR USE A CUSTOMER'S DEBIT  
13 CARD OR CREDIT CARD NUMBER WITHOUT THE CUSTOMER'S CONSENT."

14 SECTION 2. Article 14.06(d), Code of Criminal Procedure, is  
15 amended to read as follows:

16 (d) Subsection (c) applies only to a person charged with  
17 committing an offense under:

18 (1) Section 481.121, Health and Safety Code, if the  
19 offense is punishable under Subsection (b)(2) or (3) [~~(b)(1) or~~  
20 ~~(2)~~] of that section;

21 (1-a) Section 481.1161, Health and Safety Code, if the  
22 offense is punishable under Subsection (b)(1) or (2) of that  
23 section;

24 (2) Section 28.03, Penal Code, if the offense is

1 punishable under Subsection (b)(2) of that section;

2 (3) Section 28.08, Penal Code, if the offense is  
3 punishable under Subsection (b)(2) [~~(b)(1)~~] of that section;

4 (4) Section 31.03, Penal Code, if the offense is  
5 punishable under Subsection (e)(2)(A) of that section;

6 (5) Section 31.04, Penal Code, if the offense is  
7 punishable under Subsection (e)(2) of that section;

8 (6) Section 38.114, Penal Code, if the offense is  
9 punishable as a Class B misdemeanor; or

10 (7) Section 521.457, Transportation Code.

11 SECTION 3. Section 15(a)(1), Article 42.12, Code of  
12 Criminal Procedure, is amended to read as follows:

13 (1) On conviction of a state jail felony under Section  
14 481.115(b-1) [~~481.115(b)~~], 481.1151(b)(1), 481.116(b),  
15 481.1161(b)(3), 481.121(b)(4) [~~481.121(b)(3)~~], or 481.129(g)(1),  
16 Health and Safety Code, that is punished under Section 12.35(a),  
17 Penal Code, the judge shall suspend the imposition of the sentence  
18 and place the defendant on community supervision, unless the  
19 defendant has previously been convicted of a felony, other than a  
20 felony punished under Section 12.44(a), Penal Code, or unless the  
21 conviction resulted from an adjudication of the guilt of a  
22 defendant previously placed on deferred adjudication community  
23 supervision for the offense, in which event the judge may suspend  
24 the imposition of the sentence and place the defendant on community  
25 supervision or may order the sentence to be executed. The  
26 provisions of this subdivision requiring the judge to suspend the  
27 imposition of the sentence and place the defendant on community

1 supervision do not apply to a defendant who:

2 (A) under Section [481.1151\(b\)\(1\)](#), Health and  
3 Safety Code, possessed more than five abuse units of the controlled  
4 substance;

5 (B) under Section [481.1161\(b\)\(3\)](#), Health and  
6 Safety Code, possessed more than one pound, by aggregate weight,  
7 including adulterants or dilutants, of the controlled substance; or

8 (C) under Section [481.121\(b\)\(4\)](#) [~~[481.121\(b\)\(3\)](#)~~],  
9 Health and Safety Code, possessed more than one pound of marihuana.

10 SECTION 4. Section [51.03\(b\)](#), Family Code, is amended to  
11 read as follows:

12 (b) Conduct indicating a need for supervision is:

13 (1) subject to Subsection (f), conduct, other than a  
14 traffic offense, that violates:

15 (A) the penal laws of this state of the grade of  
16 misdemeanor that are punishable by fine only; or

17 (B) the penal ordinances of any political  
18 subdivision of this state;

19 (2) the absence of a child on 10 or more days or parts  
20 of days within a six-month period in the same school year or on  
21 three or more days or parts of days within a four-week period from  
22 school;

23 (3) the voluntary absence of a child from the child's  
24 home without the consent of the child's parent or guardian for a  
25 substantial length of time or without intent to return;

26 (4) conduct prohibited by city ordinance or by state  
27 law involving the inhalation of the fumes or vapors of paint and

1 other protective coatings or glue and other adhesives and the  
2 volatile chemicals itemized in Section 485.001, Health and Safety  
3 Code;

4 (5) an act that violates a school district's  
5 previously communicated written standards of student conduct for  
6 which the child has been expelled under Section 37.007(c),  
7 Education Code;

8 (6) conduct that violates a reasonable and lawful  
9 order of a court entered under Section 264.305;

10 (7) notwithstanding Subsection (a)(1), conduct  
11 described by Section 43.02(a) or (b) [~~43.02(a)(1) or (2)~~], Penal  
12 Code; or

13 (8) notwithstanding Subsection (a)(1), conduct that  
14 violates Section 43.261, Penal Code.

15 SECTION 5. Section 261.001(1), Family Code, is amended to  
16 read as follows:

17 (1) "Abuse" includes the following acts or omissions  
18 by a person:

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

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

26 (C) physical injury that results in substantial  
27 harm to the child, or the genuine threat of substantial harm from

1 physical injury to the child, including an injury that is at  
2 variance with the history or explanation given and excluding an  
3 accident or reasonable discipline by a parent, guardian, or  
4 managing or possessory conservator that does not expose the child  
5 to a substantial risk of harm;

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

9 (E) sexual conduct harmful to a child's mental,  
10 emotional, or physical welfare, including conduct that constitutes  
11 the offense of continuous sexual abuse of young child or children  
12 under Section 21.02, Penal Code, indecency with a child under  
13 Section 21.11, Penal Code, sexual assault under Section 22.011,  
14 Penal Code, or aggravated sexual assault under Section 22.021,  
15 Penal Code;

16 (F) failure to make a reasonable effort to  
17 prevent sexual conduct harmful to a child;

18 (G) compelling or encouraging the child to engage  
19 in sexual conduct as defined by Section 43.01, Penal Code,  
20 including compelling or encouraging the child in a manner ~~[conduct]~~  
21 that constitutes an offense of trafficking of persons under Section  
22 20A.02(a)(7) or (8), Penal Code, prostitution under Section  
23 43.02(b) ~~[43.02(a)(2)]~~, Penal Code, or compelling prostitution  
24 under Section 43.05(a)(2), Penal Code;

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

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

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

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

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

13 (L) knowingly causing, permitting, encouraging,  
14 engaging in, or allowing a child to be trafficked in a manner  
15 punishable as an offense under Section 20A.02(a)(5), (6), (7), or  
16 (8), Penal Code, or the failure to make a reasonable effort to  
17 prevent a child from being trafficked in a manner punishable as an  
18 offense under any of those sections.

19 SECTION 6. Section 169.002(a), Health and Safety Code, is  
20 amended to read as follows:

21 (a) The commissioners court of a county or governing body of  
22 a municipality may establish a first offender prostitution  
23 prevention program for defendants charged with an offense under  
24 Section 43.02(b) [~~43.02(a)(2)~~], Penal Code [~~in which the defendant~~  
25 ~~offered or agreed to hire a person to engage in sexual conduct~~].

26 SECTION 7. Section 169A.002(a), Health and Safety Code, is  
27 amended to read as follows:

1 (a) The commissioners court of a county or governing body of  
2 a municipality may establish a prostitution prevention program for  
3 defendants charged with an offense under Section 43.02(a)  
4 [43.02(a)(1)], Penal Code~~[, in which the defendant offered or~~  
5 ~~agreed to engage in or engaged in sexual conduct for a fee]~~.

6 SECTION 8. Section 481.115, Health and Safety Code, is  
7 amended by amending Subsection (b) and adding Subsection (b-1) to  
8 read as follows:

9 (b) Except as provided by Subsection (b-1), an ~~[An]~~ offense  
10 under Subsection (a) is a Class A misdemeanor ~~[state jail felony]~~ if  
11 the amount of the controlled substance possessed is, by aggregate  
12 weight, including adulterants or dilutants, less than one gram.

13 (b-1) An offense punishable under Subsection (b) is a state  
14 jail felony if the person has been previously convicted of an  
15 offense under this section or Section 481.1151, 481.116, 481.1161,  
16 481.117, 481.118, or 481.121.

17 SECTION 9. Section 481.121(b), Health and Safety Code, is  
18 amended to read as follows:

19 (b) An offense under Subsection (a) is:

20 (1) a Class C misdemeanor if the amount of marihuana  
21 possessed is one ounce or less;

22 (2) a Class B misdemeanor if the amount of marihuana  
23 possessed is two ounces or less but more than one ounce;

24 (3) ~~[(2)]~~ a Class A misdemeanor if the amount of  
25 marihuana possessed is four ounces or less but more than two ounces;

26 (4) ~~[(3)]~~ a state jail felony if the amount of  
27 marihuana possessed is five pounds or less but more than four

1 ounces;

2           (5) [~~(4)~~] a felony of the third degree if the amount of  
3 marihuana possessed is 50 pounds or less but more than 5 pounds;

4           (6) [~~(5)~~] a felony of the second degree if the amount  
5 of marihuana possessed is 2,000 pounds or less but more than 50  
6 pounds; and

7           (7) [~~(6)~~] punishable by imprisonment in the Texas  
8 Department of Criminal Justice for life or for a term of not more  
9 than 99 years or less than 5 years, and a fine not to exceed \$50,000,  
10 if the amount of marihuana possessed is more than 2,000 pounds.

11           SECTION 10. Section [481.126\(a\)](#), Health and Safety Code, is  
12 amended to read as follows:

13           (a) A person commits an offense if the person:

14           (1) barter property or expends funds the person knows  
15 are derived from the commission of an offense under this chapter  
16 punishable by imprisonment in the Texas Department of Criminal  
17 Justice for life;

18           (2) barter property or expends funds the person knows  
19 are derived from the commission of an offense under Section  
20 [481.121\(a\)](#) that is punishable under Section [481.121\(b\)\(6\)](#)  
21 [~~[481.121\(b\)\(5\)](#)~~];

22           (3) barter property or finances or invests funds the  
23 person knows or believes are intended to further the commission of  
24 an offense for which the punishment is described by Subdivision  
25 (1); or

26           (4) barter property or finances or invests funds the  
27 person knows or believes are intended to further the commission of

1 an offense under Section 481.121(a) that is punishable under  
2 Section 481.121(b)(6) [~~481.121(b)(5)~~].

3 SECTION 11. Sections 481.134(c), (d), (e), and (f), Health  
4 and Safety Code, are amended to read as follows:

5 (c) The minimum term of confinement or imprisonment for an  
6 offense otherwise punishable under Section 481.112(c), (d), (e), or  
7 (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e),  
8 481.115(c)-(f), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or  
9 (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e),  
10 481.120(b)(4), (5), or (6), or 481.121(b)(5), (6), or (7)  
11 [~~481.121(b)(4), (5), or (6)~~] is increased by five years and the  
12 maximum fine for the offense is doubled if it is shown on the trial  
13 of the offense that the offense was committed:

14 (1) in, on, or within 1,000 feet of the premises of a  
15 school, the premises of a public or private youth center, or a  
16 playground; or

17 (2) on a school bus.

18 (d) An offense otherwise punishable under Section  
19 481.112(b), 481.113(b), 481.114(b), 481.115(b-1) [~~481.115(b)~~],  
20 481.116(b), 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(4)  
21 [~~481.121(b)(3)~~] is a felony of the third degree if it is shown on  
22 the trial of the offense that the offense was committed:

23 (1) in, on, or within 1,000 feet of any real property  
24 that is owned, rented, or leased to a school or school board, the  
25 premises of a public or private youth center, or a playground; or

26 (2) on a school bus.

27 (e) An offense otherwise punishable under Section

1 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3)  
2 [~~481.121(b)(2)~~] is a state jail felony if it is shown on the trial  
3 of the offense that the offense was committed:

4 (1) in, on, or within 1,000 feet of any real property  
5 that is owned, rented, or leased to a school or school board, the  
6 premises of a public or private youth center, or a playground; or

7 (2) on a school bus.

8 (f) An offense otherwise punishable under Section  
9 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) or (2) is a  
10 Class A misdemeanor if it is shown on the trial of the offense that  
11 the offense was committed:

12 (1) in, on, or within 1,000 feet of any real property  
13 that is owned, rented, or leased to a school or school board, the  
14 premises of a public or private youth center, or a playground; or

15 (2) on a school bus.

16 SECTION 12. Section 28.03(b), Penal Code, is amended to  
17 read as follows:

18 (b) Except as provided by Subsections (f) and (h), an  
19 offense under this section is:

20 (1) a Class C misdemeanor if:

21 (A) the amount of pecuniary loss is less than  
22 \$500 [~~\$50~~]; or

23 (B) except as provided in Subdivision (3)(A) or  
24 (3)(B), it causes substantial inconvenience to others;

25 (2) a Class B misdemeanor if the amount of pecuniary  
26 loss is \$500 [~~\$50~~] or more but less than \$1,500 [~~\$500~~];

27 (3) a Class A misdemeanor if:

1 (A) the amount of pecuniary loss  
2 is \$1,500 [~~\$500~~] or more but less than \$20,000 [~~\$1,500~~]; or

3 (B) the actor causes in whole or in part  
4 impairment or interruption of any public water supply, or causes to  
5 be diverted in whole, in part, or in any manner, including  
6 installation or removal of any device for any such purpose, any  
7 public water supply, regardless of the amount of the pecuniary  
8 loss;

9 (4) a state jail felony if the amount of pecuniary loss  
10 is:

11 (A) [~~\$1,500 or more but less than \$20,000,~~  
12 [~~(B)~~] less than \$20,000 [~~\$1,500~~], if the property  
13 damaged or destroyed is a habitation and if the damage or  
14 destruction is caused by a firearm or explosive weapon;

15 (B) [~~(C)~~] less than \$20,000 [~~\$1,500~~], if the  
16 property was a fence used for the production or containment of:

17 (i) cattle, bison, horses, sheep, swine,  
18 goats, exotic livestock, or exotic poultry; or

19 (ii) game animals as that term is defined by  
20 Section [63.001](#), Parks and Wildlife Code; or

21 (C) [~~(D)~~] less than \$20,000 and the actor causes  
22 wholly or partly impairment or interruption of public  
23 communications, public transportation, public gas or power supply,  
24 or other public service, or causes to be diverted wholly, partly, or  
25 in any manner, including installation or removal of any device for  
26 any such purpose, any public communications or public gas or power  
27 supply;

1           (5) a felony of the third degree if the amount of the  
2 pecuniary loss is \$20,000 or more but less than \$100,000;

3           (6) a felony of the second degree if the amount of  
4 pecuniary loss is \$100,000 or more but less than \$200,000; or

5           (7) a felony of the first degree if the amount of  
6 pecuniary loss is \$200,000 or more.

7           SECTION 13. Sections 28.08(b) and (d), Penal Code, are  
8 amended to read as follows:

9           (b) Except as provided by Subsection (d), an offense under  
10 this section is:

11           (1) a Class C misdemeanor if the amount of pecuniary  
12 loss is less than \$100;

13           (2) a Class B misdemeanor if the amount of pecuniary  
14 loss is \$100 or more but less than \$750 [~~\$500~~];

15           (3) [~~(2)~~] a Class A misdemeanor if the amount of  
16 pecuniary loss is \$750 [~~\$500~~] or more but less than \$2,500 [~~\$1,500~~];

17           (4) [~~(3)~~] a state jail felony if the amount of  
18 pecuniary loss is \$2,500 [~~\$1,500~~] or more but less than \$30,000  
19 [~~\$20,000~~];

20           (5) [~~(4)~~] a felony of the third degree if the amount of  
21 pecuniary loss is \$30,000 [~~\$20,000~~] or more but less than \$150,000  
22 [~~\$100,000~~];

23           (6) [~~(5)~~] a felony of the second degree if the amount  
24 of pecuniary loss is \$150,000 [~~\$100,000~~] or more but less than  
25 \$300,000 [~~\$200,000~~]; or

26           (7) [~~(6)~~] a felony of the first degree if the amount of  
27 pecuniary loss is \$300,000 [~~\$200,000~~] or more.

1 (d) An offense under this section is a state jail felony if:

2 (1) the marking is made on a school, an institution of  
3 higher education, a place of worship or human burial, a public  
4 monument, or a community center that provides medical, social, or  
5 educational programs; and

6 (2) the amount of the pecuniary loss to real property  
7 or to tangible personal property is \$750 or more but less than  
8 \$30,000 [~~\$20,000~~].

9 SECTION 14. Section 30.02(c), Penal Code, is amended to  
10 read as follows:

11 (c) Except as provided in Subsection (d), an offense under  
12 this section is a:

13 (1) Class A misdemeanor [~~state jail felony~~] if  
14 committed in a building other than a habitation; or

15 (2) felony of the second degree if committed in a  
16 habitation.

17 SECTION 15. Section 31.03(e), Penal Code, is amended to  
18 read as follows:

19 (e) Except as provided by Subsection (f), an offense under  
20 this section is:

21 (1) a Class C misdemeanor if the value of the property  
22 stolen is less than \$500 [+

23 [~~(A) \$50, or~~

24 [~~(B) \$20 and the defendant obtained the property~~  
25 ~~by issuing or passing a check or similar sight order in a manner~~  
26 ~~described by Section 31.06~~];

27 (2) a Class B misdemeanor if:

1 (A) the value of the property stolen is \$500 [~~+~~  
2 [~~(i) \$50~~] or more but less than \$1,500  
3 [~~\$500~~]; [~~or~~

4 [~~(ii) \$20 or more but less than \$500 and the~~  
5 ~~defendant obtained the property by issuing or passing a check or~~  
6 ~~similar sight order in a manner described by Section 31.06;~~]

7 (B) the value of the property stolen is less than  
8 \$500 [~~+~~

9 [~~(i) \$50~~] and the defendant has previously  
10 been convicted of any grade of theft; or

11 [~~(ii) \$20, the defendant has previously~~  
12 ~~been convicted of any grade of theft, and the defendant obtained the~~  
13 ~~property by issuing or passing a check or similar sight order in a~~  
14 ~~manner described by Section 31.06; or]~~

15 (C) the property stolen is a driver's license,  
16 commercial driver's license, or personal identification  
17 certificate issued by this state or another state;

18 (3) a Class A misdemeanor if the value of the property  
19 stolen is \$1,500 [~~\$500~~] or more but less than \$20,000 [~~\$1,500~~];

20 (4) a state jail felony if:

21 (A) [~~the value of the property stolen is \$1,500~~  
22 ~~or more but less than \$20,000, or]~~ the property is less than 10 head  
23 of sheep, swine, or goats or any part thereof under the value of  
24 \$20,000;

25 (B) regardless of value, the property is stolen  
26 from the person of another or from a human corpse or grave,  
27 including property that is a military grave marker;

1 (C) the property stolen is a firearm, as defined  
2 by Section 46.01;

3 (D) the value of the property stolen is less than  
4 \$20,000 [~~\$1,500~~] and the defendant has been previously convicted  
5 two or more times of any grade of theft;

6 (E) the property stolen is an official ballot or  
7 official carrier envelope for an election; or

8 (F) the value of the property stolen is less than  
9 \$20,000 and the property stolen is:

10 (i) aluminum;

11 (ii) bronze;

12 (iii) copper; or

13 (iv) brass;

14 (5) a felony of the third degree if the value of the  
15 property stolen is \$20,000 or more but less than \$100,000, or the  
16 property is:

17 (A) cattle, horses, or exotic livestock or exotic  
18 fowl as defined by Section 142.001, Agriculture Code, stolen during  
19 a single transaction and having an aggregate value of less than  
20 \$100,000; or

21 (B) 10 or more head of sheep, swine, or goats  
22 stolen during a single transaction and having an aggregate value of  
23 less than \$100,000;

24 (6) a felony of the second degree if:

25 (A) the value of the property stolen is \$100,000  
26 or more but less than \$200,000; or

27 (B) the value of the property stolen is less than

1 \$200,000 and the property stolen is an automated teller machine or  
2 the contents or components of an automated teller machine; or

3 (7) a felony of the first degree if the value of the  
4 property stolen is \$200,000 or more.

5 SECTION 16. Sections 31.04(b) and (e), Penal Code, are  
6 amended to read as follows:

7 (b) For purposes of this section, intent to avoid payment is  
8 presumed if:

9 (1) the actor absconded without paying for the service  
10 or expressly refused to pay for the service in circumstances where  
11 payment is ordinarily made immediately upon rendering of the  
12 service, as in hotels, campgrounds, recreational vehicle parks,  
13 restaurants, and comparable establishments;

14 (2) the actor failed to make payment under a service  
15 agreement within 10 days after receiving notice demanding payment;

16 (3) the actor returns property held under a rental  
17 agreement after the expiration of the rental agreement and fails to  
18 pay the applicable rental charge for the property within 10 days  
19 after the date on which the actor received notice demanding  
20 payment; or

21 (4) the actor failed to return the property held under  
22 a rental agreement:

23 (A) within five days after receiving notice  
24 demanding return, if the property is valued at less than \$2,500  
25 [~~\$1,500~~]; or

26 (B) within three days after receiving notice  
27 demanding return, if the property is valued at \$2,500 [~~\$1,500~~] or

1 more.

2 (e) An offense under this section is:

3 (1) a Class C misdemeanor if the value of the service  
4 stolen is less than \$100 [~~\$20~~];

5 (2) a Class B misdemeanor if the value of the service  
6 stolen is \$100 [~~\$20~~] or more but less than \$750 [~~\$500~~];

7 (3) a Class A misdemeanor if the value of the service  
8 stolen is \$750 [~~\$500~~] or more but less than \$2,500 [~~\$1,500~~];

9 (4) a state jail felony if the value of the service  
10 stolen is \$2,500 [~~\$1,500~~] or more but less than \$30,000 [~~\$20,000~~];

11 (5) a felony of the third degree if the value of the  
12 service stolen is \$30,000 [~~\$20,000~~] or more but less than \$150,000  
13 [~~\$100,000~~];

14 (6) a felony of the second degree if the value of the  
15 service stolen is \$150,000 [~~\$100,000~~] or more but less than  
16 \$300,000 [~~\$200,000~~]; or

17 (7) a felony of the first degree if the value of the  
18 service stolen is \$300,000 [~~\$200,000~~] or more.

19 SECTION 17. Section 32.21(c), Penal Code, is amended to  
20 read as follows:

21 (c) Except as provided by Subsections [~~(d)~~] (e) [~~7~~] and  
22 (e-1), an offense under this section is a Class A misdemeanor.

23 SECTION 18. Section 32.31(d), Penal Code, is amended to  
24 read as follows:

25 (d) An offense under this section is a Class A misdemeanor  
26 [~~state jail felony~~], except that the offense is a felony of the  
27 third degree if it is shown on the trial of the offense that the

1 offense was committed against an elderly individual as defined by  
2 Section 22.04.

3 SECTION 19. Section 32.51(c), Penal Code, is amended to  
4 read as follows:

5 (c) An offense under this section is:

6 (1) a Class A misdemeanor [~~state jail felony~~] if the  
7 number of items obtained, possessed, transferred, or used is less  
8 than five;

9 (2) a state jail felony [~~of the third degree~~] if the  
10 number of items obtained, possessed, transferred, or used is five  
11 or more but less than 10;

12 (3) a felony of the third [~~second~~] degree if the number  
13 of items obtained, possessed, transferred, or used is 10 or more but  
14 less than 50; or

15 (4) a felony of the second [~~first~~] degree if the number  
16 of items obtained, possessed, transferred, or used is 50 or more.

17 SECTION 20. Section 43.02, Penal Code, is amended by  
18 amending Subsections (a), (b), (c), and (d) and adding Subsections  
19 (b-1) and (c-1) to read as follows:

20 (a) A person commits an offense if, in return for receipt of  
21 a fee, the person knowingly:

22 (1) offers to engage, agrees to engage, or engages in  
23 sexual conduct [~~for a fee~~]; or

24 (2) solicits another in a public place to engage with  
25 the actor [~~person~~] in sexual conduct for hire.

26 (b) A person commits an offense if, based on the payment of a  
27 fee by the actor or another person on behalf of the actor, the

1 person knowingly:

2 (1) offers to engage, agrees to engage, or engages in  
3 sexual conduct; or

4 (2) solicits another in a public place to engage with  
5 the actor in sexual conduct for hire.

6 (b-1) An offense is established under Subsection (a)  
7 regardless of [~~(a)(1)~~] whether the actor is offered or actually  
8 receives the [~~is to receive or pay a~~] fee. An offense is  
9 established under Subsection (b) regardless of [~~(a)(2)~~] whether the  
10 actor or another person on behalf of the actor offers or actually  
11 pays the fee [~~solicits a person to hire the actor or offers to hire~~  
12 ~~the person solicited~~].

13 (c) An offense under Subsection (a) [~~this section~~] is a  
14 Class B misdemeanor, except that the offense is a Class A  
15 misdemeanor if the actor has previously been convicted one or more  
16 times of an offense under that subsection.

17 (c-1) An offense under Subsection (b) is a Class B  
18 misdemeanor, except that the offense is:

19 (1) a Class A misdemeanor if the actor has previously  
20 been convicted one or two times of an offense under that subsection  
21 [~~this section~~];

22 (2) a state jail felony if the actor has previously  
23 been convicted three or more times of an offense under that  
24 subsection [~~this section~~]; or

25 (3) a felony of the second degree if the person  
26 solicited is younger than 18 years of age, regardless of whether the  
27 actor knows the age of the person solicited at the time the actor

1 commits the offense.

2 (d) It is a defense to prosecution for an offense under  
3 Subsection (a) [~~under this section~~] that the actor engaged in the  
4 conduct that constitutes the offense because the actor was the  
5 victim of conduct that constitutes an offense under Section [20A.02](#)  
6 or [43.05](#).

7 SECTION 21. Section [32.21](#)(d), Penal Code, is repealed.

8 SECTION 22. (a) Not later than December 1 of each year, the  
9 Texas Department of Criminal Justice shall report to the  
10 legislature on the financial impact to the state during the  
11 preceding state fiscal year of reducing penalties under this Act.

12 (b) The report must include an analysis of incarceration  
13 costs incurred by the state and local governments, including the  
14 cost of constructing prisons and jails.

15 (c) The comptroller shall verify the findings of the Texas  
16 Department of Criminal Justice in analyzing the cost savings  
17 realized by the state under this Act. The Texas Department of  
18 Criminal Justice may retain the amount of the actual savings  
19 attributable to implementation of this Act, to the extent that the  
20 savings come from funds appropriated to the department and to the  
21 extent the department distributed that amount to programs or  
22 facilities for the supervision and rehabilitation of offenders. The  
23 Texas Department of Criminal Justice may transfer savings  
24 attributable to implementation of this Act from the first year of  
25 the fiscal biennium to the second year of the fiscal biennium,  
26 provided that the department uses the full amount transferred for  
27 distribution to programs or facilities for the supervision and

1 rehabilitation of offenders.

2           SECTION 23. The changes in law made by this Act apply only  
3 to an offense committed on or after the effective date of this Act.  
4 An offense committed before the effective date of this Act is  
5 governed by the law in effect on the date the offense was committed,  
6 and the former law is continued in effect for that purpose. For  
7 purposes of this section, an offense was committed before the  
8 effective date of this Act if any element of the offense occurred  
9 before that date.

10           SECTION 24. This Act takes effect September 1, 2015.