

By: Raney

H.B. No. 3257

A BILL TO BE ENTITLED

AN ACT

relating to the criminal consequences of using or exhibiting an imitation firearm.

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

SECTION 1. Section 1.07(a), Penal Code, is amended by adding Subdivision (25-a) to read as follows:

(25-a) "Imitation firearm" means any device, model, object, toy, or air gun designed by the manufacturer to replicate or substantially appear to be an actual firearm, but does not include any replica or facsimile that cannot reasonably be perceived to be a firearm because of a distinct color, exaggerated size, or other design feature.

SECTION 2. Section 12.35(c), Penal Code, is amended to read as follows:

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

(1) a deadly weapon or imitation firearm, as those terms are defined by Section 1.07, was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or imitation firearm or was a party to the offense and knew that a deadly weapon or imitation firearm would be used or exhibited; or

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

3 (A) under Section 20A.03 or 21.02 or listed in
4 Article 42A.054(a), Code of Criminal Procedure; or

5 (B) for which the judgment contains an
6 affirmative finding under Article 42A.054(c) or (d), Code of
7 Criminal Procedure.

8 SECTION 3. Section 20.04(b), Penal Code, is amended to read
9 as follows:

10 (b) A person commits an offense if the person intentionally
11 or knowingly abducts another person and uses or exhibits a deadly
12 weapon or imitation firearm during the commission of the offense.

13 SECTION 4. Sections 22.02(a) and (b), Penal Code, are
14 amended to read as follows:

15 (a) A person commits an offense if the person commits
16 assault as defined in Sec. 22.01 and the person:

17 (1) causes serious bodily injury to another, including
18 the person's spouse; or

19 (2) uses or exhibits a deadly weapon or imitation
20 firearm during the commission of the assault.

21 (b) An offense under this section is a felony of the second
22 degree, except that the offense is a felony of the first degree if:

23 (1) the actor uses a deadly weapon or imitation
24 firearm during the commission of the assault and causes serious
25 bodily injury to a person whose relationship to or association with
26 the defendant is described by Section 71.0021(b), 71.003, or
27 71.005, Family Code;

1 (2) regardless of whether the offense is committed
2 under Subsection (a)(1) or (a)(2), the offense is committed:

3 (A) by a public servant acting under color of the
4 servant's office or employment;

5 (B) against a person the actor knows is a public
6 servant while the public servant is lawfully discharging an
7 official duty, or in retaliation or on account of an exercise of
8 official power or performance of an official duty as a public
9 servant;

10 (C) in retaliation against or on account of the
11 service of another as a witness, prospective witness, informant, or
12 person who has reported the occurrence of a crime; or

13 (D) against a person the actor knows is a
14 security officer while the officer is performing a duty as a
15 security officer; or

16 (3) the actor is in a motor vehicle, as defined by
17 Section 501.002, Transportation Code, and:

18 (A) knowingly discharges a firearm at or in the
19 direction of a habitation, building, or vehicle;

20 (B) is reckless as to whether the habitation,
21 building, or vehicle is occupied; and

22 (C) in discharging the firearm, causes serious
23 bodily injury to any person.

24 SECTION 5. Section 22.021(a), Penal Code, is amended to
25 read as follows:

26 (a) A person commits an offense:

27 (1) if the person:

- 1 (A) intentionally or knowingly:
- 2 (i) causes the penetration of the anus or
- 3 sexual organ of another person by any means, without that person's
- 4 consent;
- 5 (ii) causes the penetration of the mouth of
- 6 another person by the sexual organ of the actor, without that
- 7 person's consent; or
- 8 (iii) causes the sexual organ of another
- 9 person, without that person's consent, to contact or penetrate the
- 10 mouth, anus, or sexual organ of another person, including the
- 11 actor; or
- 12 (B) regardless of whether the person knows the
- 13 age of the child at the time of the offense, intentionally or
- 14 knowingly:
- 15 (i) causes the penetration of the anus or
- 16 sexual organ of a child by any means;
- 17 (ii) causes the penetration of the mouth of
- 18 a child by the sexual organ of the actor;
- 19 (iii) causes the sexual organ of a child to
- 20 contact or penetrate the mouth, anus, or sexual organ of another
- 21 person, including the actor;
- 22 (iv) causes the anus of a child to contact
- 23 the mouth, anus, or sexual organ of another person, including the
- 24 actor; or
- 25 (v) causes the mouth of a child to contact
- 26 the anus or sexual organ of another person, including the actor; and
- 27 (2) if:

1 (A) the person:

2 (i) causes serious bodily injury or
3 attempts to cause the death of the victim or another person in the
4 course of the same criminal episode;

5 (ii) by acts or words places the victim in
6 fear that any person will become the victim of an offense under
7 Section 20A.02(a)(3), (4), (7), or (8) or that death, serious
8 bodily injury, or kidnapping will be imminently inflicted on any
9 person;

10 (iii) by acts or words occurring in the
11 presence of the victim threatens to cause any person to become the
12 victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or
13 to cause the death, serious bodily injury, or kidnapping of any
14 person;

15 (iv) uses or exhibits a deadly weapon or
16 imitation firearm in the course of the same criminal episode;

17 (v) acts in concert with another who
18 engages in conduct described by Subdivision (1) directed toward the
19 same victim and occurring during the course of the same criminal
20 episode; or

21 (vi) with the intent of facilitating the
22 commission of the offense, administers or provides to the victim of
23 the offense any substance capable of impairing the victim's ability
24 to appraise the nature of the act or to resist the act;

25 (B) the victim is younger than 14 years of age,
26 regardless of whether the person knows the age of the victim at the
27 time of the offense; or

1 (C) the victim is an elderly individual or a
2 disabled individual.

3 SECTION 6. Section 29.03(a), Penal Code, is amended to read
4 as follows:

5 (a) A person commits an offense if the person [~~he~~] commits
6 robbery as defined in Section 29.02, and the person [~~he~~]:

7 (1) causes serious bodily injury to another;

8 (2) uses or exhibits a deadly weapon or imitation
9 firearm; or

10 (3) causes bodily injury to another person or
11 threatens or places another person in fear of imminent bodily
12 injury or death, if the other person is:

13 (A) 65 years of age or older; or

14 (B) a disabled person.

15 SECTION 7. Section 38.03(d), Penal Code, is amended to read
16 as follows:

17 (d) An offense under this section is a felony of the third
18 degree if the actor uses a deadly weapon or imitation firearm to
19 resist the arrest or search.

20 SECTION 8. Section 38.06(e), Penal Code, is amended to read
21 as follows:

22 (e) An offense under this section is a felony of the first
23 degree if to effect the [~~his~~] escape the actor:

24 (1) causes serious bodily injury; or

25 (2) uses or threatens to use a deadly weapon or uses an
26 imitation firearm in a threatening manner.

27 SECTION 9. Section 38.07(e), Penal Code, is amended to read

1 as follows:

2 (e) An offense under this section is a felony of the second
3 degree if:

4 (1) to effect the escape, the actor or the person in
5 custody used or threatened to use a deadly weapon or used an
6 imitation firearm in a threatening manner [~~to effect the escape~~];
7 or

8 (2) the person in custody was confined in a secure
9 correctional facility after conviction of a felony.

10 SECTION 10. Sections 38.09(a) and (b), Penal Code, are
11 amended to read as follows:

12 (a) A person commits an offense if, with intent to
13 facilitate escape, the person [~~he~~] introduces into a correctional
14 facility, or provides a person in custody or an inmate with, a
15 deadly weapon or imitation firearm or anything that may be useful
16 for escape.

17 (b) An offense under this section is a felony of the third
18 degree unless the actor introduced or provided a deadly weapon or
19 imitation firearm, in which event the offense is a felony of the
20 second degree.

21 SECTION 11. Sections 38.11(a) and (d), Penal Code, are
22 amended to read as follows:

23 (a) A person commits an offense if the person provides, or
24 possesses with the intent to provide:

25 (1) an alcoholic beverage, controlled substance, or
26 dangerous drug to a person in the custody of a correctional facility
27 or civil commitment facility, except on the prescription of a

1 practitioner;

2 (2) a deadly weapon or imitation firearm to a person in
3 the custody of a correctional facility or civil commitment
4 facility;

5 (3) a cellular telephone or other wireless
6 communications device or a component of one of those devices to a
7 person in the custody of a correctional facility;

8 (4) money to a person confined in a correctional
9 facility; or

10 (5) a cigarette or tobacco product to a person
11 confined in a correctional facility, except that if the facility is
12 a local jail regulated by the Commission on Jail Standards, the
13 person commits an offense only if providing the cigarette or
14 tobacco product violates a rule or regulation adopted by the
15 sheriff or jail administrator that:

16 (A) prohibits the possession of a cigarette or
17 tobacco product by a person confined in the jail; or

18 (B) places restrictions on:

19 (i) the possession of a cigarette or
20 tobacco product by a person confined in the jail; or

21 (ii) the manner in which a cigarette or
22 tobacco product may be provided to a person confined in the jail.

23 (d) A person commits an offense if the person:

24 (1) possesses a controlled substance or dangerous drug
25 while in a correctional facility or civil commitment facility or on
26 property owned, used, or controlled by a correctional facility or
27 civil commitment facility; or

1 (2) possesses a deadly weapon or imitation firearm
2 while in a correctional facility or civil commitment facility.

3 SECTION 12. Section 42.01(a), Penal Code, is amended to
4 read as follows:

5 (a) A person commits an offense if the person [~~he~~]
6 intentionally or knowingly:

7 (1) uses abusive, indecent, profane, or vulgar
8 language in a public place, and the language by its very utterance
9 tends to incite an immediate breach of the peace;

10 (2) makes an offensive gesture or display in a public
11 place, and the gesture or display tends to incite an immediate
12 breach of the peace;

13 (3) creates, by chemical means, a noxious and
14 unreasonable odor in a public place;

15 (4) abuses or threatens a person in a public place in
16 an obviously offensive manner;

17 (5) makes unreasonable noise in a public place other
18 than a sport shooting range, as defined by Section 250.001, Local
19 Government Code, or in or near a private residence that the actor
20 [~~he~~] has no right to occupy;

21 (6) fights with another in a public place;

22 (7) discharges a firearm in a public place other than a
23 public road or a sport shooting range, as defined by Section
24 250.001, Local Government Code;

25 (8) displays a firearm or other deadly weapon or an
26 imitation firearm in a public place in a manner calculated to alarm;

27 (9) discharges a firearm on or across a public road;

1 (10) exposes the actor's [~~his~~] anus or genitals in a
2 public place and is reckless about whether another may be present
3 who will be offended or alarmed by the [~~his~~] act; or

4 (11) for a lewd or unlawful purpose:

5 (A) enters on the property of another and looks
6 into a dwelling on the property through any window or other opening
7 in the dwelling;

8 (B) while on the premises of a hotel or
9 comparable establishment, looks into a guest room not the person's
10 own through a window or other opening in the room; or

11 (C) while on the premises of a public place,
12 looks into an area such as a restroom or shower stall or changing or
13 dressing room that is designed to provide privacy to a person using
14 the area.

15 SECTION 13. The heading to Section 46.10, Penal Code, is
16 amended to read as follows:

17 Sec. 46.10. DEADLY WEAPON OR IMITATION FIREARM IN PENAL
18 INSTITUTION.

19 SECTION 14. Section 46.10(a), Penal Code, is amended to
20 read as follows:

21 (a) A person commits an offense if, while confined in a
22 penal institution, the person [~~he~~] intentionally, knowingly, or
23 recklessly:

24 (1) carries on or about the actor's [~~his~~] person a
25 deadly weapon or imitation firearm; or

26 (2) possesses or conceals a deadly weapon or imitation
27 firearm in the penal institution.

1 SECTION 15. Section 71.023(a), Penal Code, is amended to
2 read as follows:

3 (a) A person commits an offense if the person, as part of the
4 identifiable leadership of a criminal street gang, knowingly
5 finances, directs, or supervises the commission of, or a conspiracy
6 to commit, one or more of the following offenses by members of a
7 criminal street gang:

8 (1) a felony offense that is listed in Article
9 42A.054(a), Code of Criminal Procedure;

10 (2) a felony offense for which it is shown that a
11 deadly weapon or imitation firearm, as those terms are defined by
12 Section 1.07, was used or exhibited during the commission of the
13 offense or during immediate flight from the commission of the
14 offense; or

15 (3) an offense that is punishable under Section
16 481.112(e), 481.112(f), 481.1121(b)(4), 481.115(f), or
17 481.120(b)(6), Health and Safety Code.

18 SECTION 16. Section 25.06(a), Alcoholic Beverage Code, is
19 amended to read as follows:

20 (a) The county judge shall deny an original application for
21 a wine and beer retailer's permit if he finds that the applicant, or
22 the applicant's spouse, during the five years immediately preceding
23 the application, was finally convicted of a felony or one of the
24 following offenses:

25 (1) prostitution;

26 (2) a vagrancy offense involving moral turpitude;

27 (3) bookmaking;

- 1 (4) gambling or gaming;
- 2 (5) an offense involving controlled substances as
3 defined in Chapter 481, Health and Safety Code, or other dangerous
4 drugs;
- 5 (6) a violation of this code resulting in the
6 cancellation of a license or permit, or a fine of not less than
7 \$500;
- 8 (7) more than three violations of this code relating
9 to minors;
- 10 (8) bootlegging; or
- 11 (9) an offense involving a firearm or other ~~[firearms~~
12 ~~or a]~~ deadly weapon or an imitation firearm.

13 SECTION 17. Section 69.06(a), Alcoholic Beverage Code, is
14 amended to read as follows:

15 (a) The county judge shall deny an original application for
16 a retail dealer's on-premise license if the county judge finds that
17 the applicant or the applicant's spouse, during the five years
18 immediately preceding the application, was finally convicted of a
19 felony or one of the following offenses:

- 20 (1) prostitution;
- 21 (2) a vagrancy offense involving moral turpitude;
- 22 (3) bookmaking;
- 23 (4) gambling or gaming;
- 24 (5) an offense involving controlled substances as
25 defined in the Texas Controlled Substances Act, including an
26 offense involving a synthetic cannabinoid, or an offense involving
27 other dangerous drugs;

1 (6) a violation of this code resulting in the
2 cancellation of a license or permit, or a fine of not less than
3 \$500;

4 (7) more than three violations of this code relating
5 to minors;

6 (8) bootlegging; or

7 (9) an offense involving a firearm or other [~~firearms~~
8 ~~or a~~] deadly weapon or an imitation firearm.

9 SECTION 18. Section 104.01(a), Alcoholic Beverage Code, is
10 amended to read as follows:

11 (a) No person authorized to sell beer at retail, nor the
12 person's agent, servant, or employee, may engage in or permit
13 conduct on the premises of the retailer which is lewd, immoral, or
14 offensive to public decency, including, but not limited to, any of
15 the following acts:

16 (1) the use of loud and vociferous or obscene, vulgar,
17 or indecent language, or permitting its use;

18 (2) the exposure of a person or permitting a person to
19 expose himself or herself;

20 (3) rudely displaying or permitting a person to rudely
21 display a pistol or other deadly weapon, or an imitation firearm, in
22 a manner calculated to disturb persons in the retail establishment;

23 (4) solicitation of any person to buy drinks for
24 consumption by the retailer or any of the retailer's employees;

25 (5) being intoxicated on the licensed premises;

26 (6) permitting lewd or vulgar entertainment or acts;

27 (7) permitting solicitations of persons for immoral or

1 sexual purposes;

2 (8) failing or refusing to comply with state or
3 municipal health or sanitary laws or ordinances; or

4 (9) possession of a narcotic or synthetic cannabinoid
5 or any equipment used or designed for the administering of a
6 narcotic or a synthetic cannabinoid or permitting a person on the
7 licensed premises to do so.

8 SECTION 19. Article 2.139(a), Code of Criminal Procedure,
9 is amended by adding Subdivision (1-a) to read as follows:

10 (1-a) "Imitation firearm" has the meaning assigned by
11 Section 1.07, Penal Code.

12 SECTION 20. Article 2.139(b), Code of Criminal Procedure,
13 is amended to read as follows:

14 (b) The office of the attorney general by rule shall create
15 a written and electronic form for the reporting by law enforcement
16 agencies of an officer-involved injury or death. The form must
17 include spaces to report only the following information:

18 (1) the date on which the incident occurred;

19 (2) the location where the incident occurred;

20 (3) the age, gender, and race or ethnicity of each
21 peace officer involved in the incident;

22 (4) if known, the age, gender, and race or ethnicity of
23 each injured or deceased person involved in the incident;

24 (5) whether the person was injured or died as a result
25 of the incident;

26 (6) whether each injured or deceased person used,
27 exhibited, or was carrying a deadly weapon or imitation firearm

1 during the incident;

2 (7) whether each peace officer involved in the
3 incident was on duty during the incident;

4 (8) whether each peace officer involved in the
5 incident was responding to an emergency call or a request for
6 assistance and, if so, whether the officer responded to that call or
7 request with one or more other peace officers; and

8 (9) whether the incident occurred during or as a
9 result of:

10 (A) the execution of a warrant; or

11 (B) a hostage, barricade, or other emergency
12 situation.

13 SECTION 21. Article 17.291(b), Code of Criminal Procedure,
14 is amended to read as follows:

15 (b) Article 17.29 does not apply when a person has been
16 arrested or held without a warrant in the prevention of family
17 violence if there is probable cause to believe the violence will
18 continue if the person is immediately released. The head of the
19 agency arresting or holding such a person may hold the person for a
20 period of not more than four hours after bond has been posted. This
21 detention period may be extended for an additional period not to
22 exceed 48 hours, but only if authorized in a writing directed to the
23 person having custody of the detained person by a magistrate who
24 concludes that:

25 (1) the violence would continue if the person is
26 released; and

27 (2) if the additional period exceeds 24 hours,

1 probable cause exists to believe that the person committed the
2 instant offense and that, during the 10-year period preceding the
3 date of the instant offense, the person has been arrested:

4 (A) on more than one occasion for an offense
5 involving family violence; or

6 (B) for any other offense, if a deadly weapon or
7 imitation firearm, as those terms are defined by Section 1.07,
8 Penal Code, was used or exhibited during commission of the offense
9 or during immediate flight after commission of the offense.

10 SECTION 22. Article 17.292(b), Code of Criminal Procedure,
11 is amended to read as follows:

12 (b) At a defendant's appearance before a magistrate after
13 arrest for an offense involving family violence, the magistrate
14 shall issue an order for emergency protection if the arrest is for
15 an offense that also involves:

16 (1) serious bodily injury to the victim; or

17 (2) the use or exhibition of a deadly weapon or
18 imitation firearm during the commission of an assault.

19 SECTION 23. Articles 42.14(b) and (d), Code of Criminal
20 Procedure, are amended to read as follows:

21 (b) In a felony case, the judgment and sentence may be
22 rendered in the absence of the defendant only if:

23 (1) the defendant is confined in a penal institution;

24 (2) the defendant is not charged with a felony
25 offense:

26 (A) that is listed in Article 42A.054(a); or

27 (B) for which it is alleged that:

1 (i) a deadly weapon or imitation firearm
2 was used or exhibited during the commission of the offense or during
3 immediate flight from the commission of the offense; and

4 (ii) the defendant used or exhibited the
5 deadly weapon or imitation firearm or was a party to the offense and
6 knew that a deadly weapon or imitation firearm would be used or
7 exhibited;

8 (3) the defendant in writing before the appropriate
9 court having jurisdiction in the county in which the penal
10 institution is located:

11 (A) waives the right to be present at the
12 rendering of the judgment and sentence or to have counsel present;

13 (B) affirms that the defendant does not have
14 anything to say as to why the sentence should not be pronounced and
15 that there is no reason to prevent the sentence under Article 42.07;

16 (C) states that the defendant has entered into a
17 written plea agreement with the attorney representing the state in
18 the prosecution of the case; and

19 (D) requests the court to pronounce sentence in
20 the case in accordance with the plea agreement;

21 (4) the defendant and the attorney representing the
22 state in the prosecution of the case have entered into a written
23 plea agreement that is made a part of the record in the case; and

24 (5) sentence is pronounced in accordance with the plea
25 agreement.

26 (d) In this article, "deadly weapon," "imitation firearm,"
27 [~~weapon~~] and "penal institution" have the meanings assigned by

1 Section 1.07, Penal Code.

2 SECTION 24. Articles 42A.054(b), (c), and (d), Code of
3 Criminal Procedure, are amended to read as follows:

4 (b) Article 42A.053 does not apply to a defendant when it is
5 shown that:

6 (1) a deadly weapon or imitation firearm, as those
7 terms are defined by Section 1.07, Penal Code, was used or exhibited
8 during the:

9 (A) commission of a felony offense; or

10 (B) immediate flight from the commission of a
11 felony offense; and

12 (2) the defendant:

13 (A) used or exhibited the deadly weapon or
14 imitation firearm; or

15 (B) was a party to the offense and knew that a
16 deadly weapon or imitation firearm would be used or exhibited.

17 (c) The [~~On an affirmative finding regarding the use or~~
18 ~~exhibition of a deadly weapon as described by Subsection (b), the~~]
19 trial court shall enter the following affirmative findings
20 [~~finding~~] in the judgment of the court:

21 (1) an affirmative finding regarding the use or
22 exhibition of a deadly weapon as described by Subsection (b); or

23 (2) an affirmative finding regarding the use or
24 exhibition of an imitation firearm as described by Subsection (b).

25 (d) On an affirmative finding that the deadly weapon under
26 Subsection (c)(1) [~~(c)~~] was a firearm, the court shall enter that
27 finding in its judgment.

1 SECTION 25. The heading to Article 42A.204, Code of
2 Criminal Procedure, is amended to read as follows:

3 Art. 42A.204. PARTIAL EXECUTION OF SENTENCE: FIREARM OR
4 IMITATION FIREARM USED OR EXHIBITED.

5 SECTION 26. Article 42A.204(a), Code of Criminal Procedure,
6 is amended to read as follows:

7 (a) If in the trial of a felony of the second degree or
8 higher there is an affirmative finding described by Article
9 42A.054(c)(2) or (d) [~~42A.054(d)~~] and the jury recommends that the
10 court place the defendant on community supervision, the court may
11 order the defendant imprisoned in the Texas Department of Criminal
12 Justice for not less than 60 and not more than 120 days.

13 SECTION 27. The heading to Section 37.125, Education Code,
14 is amended to read as follows:

15 Sec. 37.125. EXHIBITION OR [~~7~~] USE OF FIREARM OR IMITATION
16 FIREARM; [~~7~~ OR] THREAT OF EXHIBITION OR USE OF FIREARM [~~FIREARMS~~].

17 SECTION 28. Section 37.125(a), Education Code, is amended
18 to read as follows:

19 (a) A person commits an offense if, in a manner intended to
20 cause alarm or personal injury to another person or to damage school
21 property, the person intentionally:

22 (1) exhibits or uses a firearm or imitation firearm:

23 (A) in or on any property, including a parking
24 lot, parking garage, or other parking area, that is owned by a
25 private or public school; or

26 (B) on a school bus being used to transport
27 children to or from school-sponsored activities of a private or

1 public school;

2 (2) threatens to exhibit or use a firearm in or on
3 property described by Subdivision (1)(A) or on a bus described by
4 Subdivision (1)(B) and was in possession of or had immediate access
5 to the firearm; or

6 (3) threatens to exhibit or use a firearm in or on
7 property described by Subdivision (1)(A) or on a bus described by
8 Subdivision (1)(B).

9 SECTION 29. Section 52.031(a), Family Code, is amended to
10 read as follows:

11 (a) A juvenile board may establish a first offender program
12 under this section for the referral and disposition of children
13 taken into custody, or accused prior to the filing of a criminal
14 charge, of:

15 (1) conduct indicating a need for supervision;

16 (2) a Class C misdemeanor, other than a traffic
17 offense; or

18 (3) delinquent conduct other than conduct that
19 constitutes:

20 (A) a felony of the first, second, or third
21 degree, an aggravated controlled substance felony, or a capital
22 felony; or

23 (B) a state jail felony or misdemeanor involving
24 violence to a person or the use or possession of a firearm,
25 location-restricted knife, or club, as those terms are defined by
26 Section 46.01, Penal Code, ~~or~~ a prohibited weapon, as described
27 by Section 46.05, Penal Code, or an imitation firearm, as defined by

1 Section 1.07, Penal Code.

2 SECTION 30. Section 53.01(d), Family Code, is amended to
3 read as follows:

4 (d) Unless the juvenile board approves a written procedure
5 proposed by the office of prosecuting attorney and chief juvenile
6 probation officer which provides otherwise, if it is determined
7 that the person is a child and, regardless of a finding of probable
8 cause, or a lack thereof, there is an allegation that the child
9 engaged in delinquent conduct of the grade of felony, or conduct
10 constituting a misdemeanor offense involving violence to a person
11 or the use or possession of a firearm, location-restricted knife,
12 or club, as those terms are defined by Section 46.01, Penal Code,
13 ~~or~~ prohibited weapon, as described by Section 46.05, Penal Code,
14 or imitation firearm, as defined by Section 1.07, Penal Code, the
15 case shall be promptly forwarded to the office of the prosecuting
16 attorney, accompanied by:

17 (1) all documents that accompanied the current
18 referral; and

19 (2) a summary of all prior referrals of the child to
20 the juvenile court, juvenile probation department, or a detention
21 facility.

22 SECTION 31. Section 53.02(f), Family Code, is amended to
23 read as follows:

24 (f) A child who is alleged to have engaged in delinquent
25 conduct and to have used, possessed, or exhibited a firearm, as
26 defined by Section 46.01, Penal Code, or an imitation firearm, as
27 defined by Section 1.07, Penal Code, in the commission of the

1 offense shall be detained until the child is released at the
2 direction of the judge of the juvenile court, a substitute judge
3 authorized by Section 51.04(f), or a referee appointed under
4 Section 51.04(g), including an oral direction by telephone, or
5 until a detention hearing is held as required by Section 54.01.

6 SECTION 32. Section 54.04, Family Code, is amended by
7 amending Subsection (g) and adding Subsection (g-1) to read as
8 follows:

9 (g) If the court orders a disposition under Subsection
10 (d)(3) or (m), the court shall enter the following affirmative
11 findings in the order:

12 (1) ~~[and there is]~~ an affirmative finding that the
13 defendant used or exhibited a deadly weapon during the commission
14 of the conduct or during immediate flight from commission of the
15 conduct; or

16 (2) an affirmative finding that the defendant used or
17 exhibited an imitation firearm under the circumstances described by
18 Subdivision (1) [, the court shall enter the finding in the order] .

19 (g-1) If the court orders a disposition under Subsection
20 (d)(3) or (m) and there is an affirmative finding that the deadly
21 weapon was a firearm, the court shall enter that finding in the
22 order.

23 SECTION 33. Section 54.0409(a), Family Code, is amended to
24 read as follows:

25 (a) This section applies only to conduct constituting the
26 commission of a felony:

27 (1) that is listed in Article 42A.054(a), Code of

1 Criminal Procedure; or

2 (2) for which it is shown that a deadly weapon or
3 imitation firearm, as those terms are defined by Section 1.07,
4 Penal Code, was used or exhibited during the commission of the
5 conduct or during immediate flight from the commission of the
6 conduct.

7 SECTION 34. Section 59.003(a), Family Code, is amended to
8 read as follows:

9 (a) Subject to Subsection (e), after a child's first
10 commission of delinquent conduct or conduct indicating a need for
11 supervision, the probation department or prosecuting attorney may,
12 or the juvenile court may, in a disposition hearing under Section
13 54.04 or a modification hearing under Section 54.05, assign a child
14 one of the following sanction levels according to the child's
15 conduct:

16 (1) for conduct indicating a need for supervision,
17 other than conduct described in Section 51.03(b)(3) or (4) or a
18 Class A or B misdemeanor, the sanction level is one;

19 (2) for conduct indicating a need for supervision
20 under Section 51.03(b)(3) or (4) or a Class A or B misdemeanor,
21 other than a misdemeanor involving the use or possession of a
22 firearm or use of an imitation firearm, or for delinquent conduct
23 under Section 51.03(a)(2), the sanction level is two;

24 (3) for a misdemeanor involving the use or possession
25 of a firearm or use of an imitation firearm or for a state jail
26 felony or a felony of the third degree, the sanction level is three;

27 (4) for a felony of the second degree, the sanction

1 level is four;

2 (5) for a felony of the first degree, other than a
3 felony involving the use of a deadly weapon or imitation firearm or
4 causing serious bodily injury, the sanction level is five;

5 (6) for a felony of the first degree involving the use
6 of a deadly weapon or imitation firearm or causing serious bodily
7 injury, for an aggravated controlled substance felony, or for a
8 capital felony, the sanction level is six; or

9 (7) for a felony of the first degree involving the use
10 of a deadly weapon or imitation firearm or causing serious bodily
11 injury, for an aggravated controlled substance felony, or for a
12 capital felony, if the petition has been approved by a grand jury
13 under Section 53.045, or if a petition to transfer the child to
14 criminal court has been filed under Section 54.02, the sanction
15 level is seven.

16 SECTION 35. Section 497.081(d), Government Code, is amended
17 to read as follows:

18 (d) An inmate may not be appointed to serve as a trusty for
19 the purposes of this subchapter if the inmate has attempted an
20 escape in which the inmate:

21 (1) used a firearm or other deadly weapon or an
22 imitation firearm; or

23 (2) wounded a guard or other person.

24 SECTION 36. Section 499.027(b), Government Code, is amended
25 to read as follows:

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

1 (1) the inmate is awaiting transfer to the
2 institutional division, or serving a sentence, for an offense for
3 which the judgment contains an affirmative finding under Article
4 42A.054(c) or (d), Code of Criminal Procedure;

5 (2) the inmate is awaiting transfer to the
6 institutional division, or serving a sentence, for an offense
7 listed in one of the following sections of the Penal Code:

- 8 (A) Section 19.02 (murder);
- 9 (B) Section 19.03 (capital murder);
- 10 (C) Section 19.04 (manslaughter);
- 11 (D) Section 20.03 (kidnapping);
- 12 (E) Section 20.04 (aggravated kidnapping);
- 13 (F) Section 21.11 (indecenty with a child);
- 14 (G) Section 22.011 (sexual assault);
- 15 (H) Section 22.02 (aggravated assault);
- 16 (I) Section 22.021 (aggravated sexual assault);
- 17 (J) Section 22.04 (injury to a child, elderly
18 individual, or disabled individual);
- 19 (K) Section 25.02 (prohibited sexual conduct);
- 20 (L) Section 25.08 (sale or purchase of a child);
- 21 (M) Section 28.02 (arson);
- 22 (N) Section 29.02 (robbery);
- 23 (O) Section 29.03 (aggravated robbery);
- 24 (P) Section 30.02 (burglary), if the offense is
25 punished as a first-degree felony under that section;
- 26 (Q) Section 43.04 (aggravated promotion of
27 prostitution);

1 (R) Section 43.05 (compelling prostitution);

2 (S) Section 43.24 (sale, distribution, or
3 display of harmful material to minor);

4 (T) Section 43.25 (sexual performance by a
5 child);

6 (U) Section 46.10 (deadly weapon or imitation
7 firearm in penal institution);

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

10 (W) Section 15.02 (criminal conspiracy), if the
11 offense that is the subject of the conspiracy is listed in this
12 subsection;

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

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

17 (Z) Section 20A.02 (trafficking of persons); or

18 (AA) Section 20A.03 (continuous trafficking of
19 persons); or

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

25 SECTION 37. Section 499.053(d), Government Code, is amended
26 to read as follows:

27 (d) A person transferred from the Texas Juvenile Justice

1 Department or a post-adjudication secure correctional facility for
2 the offense of capital murder shall become eligible for parole as
3 provided in Section 508.145(d)(2) [~~508.145(d) for an offense listed~~
4 ~~in Article 42A.054, Code of Criminal Procedure, or an offense for~~
5 ~~which a deadly weapon finding has been made~~].

6 SECTION 38. The change in law made by this Act applies only
7 to an offense committed on or after the effective date of this Act.
8 An offense committed before the effective date of this Act is
9 governed by the law in effect on the date the offense was committed,
10 and the former law is continued in effect for that purpose. For
11 purposes of this section, an offense was committed before the
12 effective date of this Act if any element of the offense occurred
13 before that date.

14 SECTION 39. This Act takes effect September 1, 2019.