87R17248 ADM-F

By:  Meyer, Hunter, A. Johnson of Harris H.B. No. 3110

Substitute the following for H.B. No. 3110:

By:  Bell of Kaufman C.S.H.B. No. 3110

A BILL TO BE ENTITLED

AN ACT

relating to possession or promotion of child sexual abuse material; increasing a criminal penalty; changing eligibility for community supervision.

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

ARTICLE 1. POSSESSION OR PROMOTION OF CHILD SEXUAL ABUSE MATERIAL

SECTION 1.01.  Article 42A.054(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Article 42A.053 does not apply to a defendant adjudged guilty of an offense under:

(1)  Section 15.03, Penal Code, if the offense is punishable as a felony of the first degree;

(2)  Section 19.02, Penal Code (Murder);

(3)  Section 19.03, Penal Code (Capital Murder);

(4)  Section 20.04, Penal Code (Aggravated Kidnapping);

(5)  Section 20A.02, Penal Code (Trafficking of Persons);

(6)  Section 20A.03, Penal Code (Continuous Trafficking of Persons);

(7)  Section 21.11, Penal Code (Indecency with a Child);

(8)  Section 22.011, Penal Code (Sexual Assault);

(9)  Section 22.021, Penal Code (Aggravated Sexual Assault);

(10)  Section 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual), if:

(A)  the offense is punishable as a felony of the first degree; and

(B)  the victim of the offense is a child;

(11)  Section 29.03, Penal Code (Aggravated Robbery);

(12)  Section 30.02, Penal Code (Burglary), if:

(A)  the offense is punishable under Subsection (d) of that section; and

(B)  the actor committed the offense with the intent to commit a felony under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(13)  Section 43.04, Penal Code (Aggravated Promotion of Prostitution);

(14)  Section 43.05, Penal Code (Compelling Prostitution);

(15)  Section 43.25, Penal Code (Sexual Performance by a Child); [~~or~~]

(16)  Section 43.26, Penal Code (Possession or Promotion of Child Sexual Abuse Material); or

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

(A)  Section 481.140 of that code (Use of Child in Commission of Offense); or

(B)  Section 481.134(c), (d), (e), or (f) of that code (Drug-free Zones) if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections.

SECTION 1.02.  Article 42A.056, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.056.  LIMITATION ON JURY-RECOMMENDED COMMUNITY SUPERVISION. A defendant is not eligible for community supervision under Article 42A.055 if the defendant:

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

(2)  is convicted of a state jail felony for which suspension of the imposition of the sentence occurs automatically under Article 42A.551;

(3)  is adjudged guilty of an offense under Section 19.02, Penal Code;

(4)  is convicted of an offense under Section 21.11, 22.011, or 22.021, Penal Code, if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(5)  is convicted of an offense under Section 20.04, Penal Code, if:

(A)  the victim of the offense was younger than 14 years of age at the time the offense was committed; and

(B)  the actor committed the offense with the intent to violate or abuse the victim sexually;

(6)  is convicted of an offense under Section 20A.02, 20A.03, 43.04, 43.05, [~~or~~] 43.25, or 43.26, Penal Code; or

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

SECTION 1.03.  The heading to Section 43.26, Penal Code, is amended to read as follows:

Sec. 43.26.  POSSESSION OR PROMOTION OF CHILD SEXUAL ABUSE MATERIAL [~~PORNOGRAPHY~~].

SECTION 1.04.  Section 43.26, Penal Code, is amended by amending Subsections (d) and (g) and adding Subsection (g-1) to read as follows:

(d)  An offense under Subsection (a) is a felony of the second [~~third~~] degree, except that the offense is[~~:~~

[~~(1) a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under that subsection; and~~

[~~(2)~~] a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted [~~two or more times~~] of an offense under that subsection.

(g)  Except as provided by Subsection (g-1), an [~~An~~] offense under Subsection (e) is a felony of the second degree with a minimum term of imprisonment of five years.

(g-1)  An offense under Subsection (e) [~~, except that the offense~~] is a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subsection.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01.  The heading to Chapter 110, Business & Commerce Code, is amended to read as follows:

CHAPTER 110. COMPUTER TECHNICIANS REQUIRED TO REPORT CHILD SEXUAL ABUSE MATERIAL [~~PORNOGRAPHY~~]

SECTION 2.02.  Section 110.001(1), Business & Commerce Code, is amended to read as follows:

(1)  "Child sexual abuse material [~~pornography~~]" means an image of a child engaging in sexual conduct or sexual performance.

SECTION 2.03.  The heading to Section 110.002, Business & Commerce Code, is amended to read as follows:

Sec. 110.002.  REPORTING OF IMAGES OF CHILD SEXUAL ABUSE MATERIAL [~~PORNOGRAPHY~~].

SECTION 2.04.  Sections 110.002(a) and (c), Business & Commerce Code, are amended to read as follows:

(a)  A computer technician who, in the course and scope of employment or business, views an image on a computer that is or appears to be child sexual abuse material [~~pornography~~] shall immediately report the discovery of the image to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children. The report must include the name and address of the owner or person claiming a right to possession of the computer, if known, and as permitted by federal law.

(c)  A telecommunications provider, commercial mobile service provider, or information service provider may not be held liable under this chapter for the failure to report child sexual abuse material [~~pornography~~] that is transmitted or stored by a user of the service.

SECTION 2.05.  Section 110.003(b), Business & Commerce Code, is amended to read as follows:

(b)  It is a defense to prosecution under this section that the actor did not report the discovery of an image of child sexual abuse material [~~pornography~~] because the child in the image appeared to be at least 18 years of age.

SECTION 2.06.  Articles 18.18(a), (b), (e), (f), (g), and (h), Code of Criminal Procedure, are amended to read as follows:

(a)  Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, for an offense involving an obscene device or material, for an offense involving child sexual abuse material [~~pornography~~], or for an offense involving a scanning device or re-encoder, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material, child sexual abuse material [~~pornography~~], or scanning device or re-encoder be destroyed or forfeited to the state. Not later than the 30th day after the final conviction of a person for an offense involving a prohibited weapon, the court entering the judgment of conviction on its own motion, on the motion of the prosecuting attorney in the case, or on the motion of the law enforcement agency initiating the complaint on notice to the prosecuting attorney in the case if the prosecutor fails to move for the order shall order that the prohibited weapon be destroyed or forfeited to the law enforcement agency that initiated the complaint. If the court fails to enter the order within the time required by this subsection, any magistrate in the county in which the offense occurred may enter the order. Following the final conviction of a person for an offense involving dog fighting, the court entering the judgment of conviction shall order that any dog-fighting equipment be destroyed or forfeited to the state. Destruction of dogs, if necessary, must be carried out by a veterinarian licensed in this state or, if one is not available, by trained personnel of a humane society or an animal shelter. If forfeited, the court shall order the contraband delivered to the state, any political subdivision of the state, or to any state institution or agency. If gambling proceeds were seized, the court shall order them forfeited to the state and shall transmit them to the grand jury of the county in which they were seized for use in investigating alleged violations of the Penal Code, or to the state, any political subdivision of the state, or to any state institution or agency.

(b)  If there is no prosecution or conviction following seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, obscene device or material, child sexual abuse material [~~pornography~~], scanning device or re-encoder, criminal instrument, or dog-fighting equipment to show cause why the property seized should not be destroyed or the proceeds forfeited. The magistrate, on the motion of the law enforcement agency seizing a prohibited weapon, shall order the weapon destroyed or forfeited to the law enforcement agency seizing the weapon, unless a person shows cause as to why the prohibited weapon should not be destroyed or forfeited. A law enforcement agency shall make a motion under this subsection [~~section~~] in a timely manner after the time at which the agency is informed in writing by the attorney representing the state that no prosecution will arise from the seizure.

(e)  Any person interested in the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, obscene device or material, child sexual abuse material [~~pornography~~], scanning device or re-encoder, criminal instrument, or dog-fighting equipment seized must appear before the magistrate on the 20th day following the date the notice was mailed or posted. Failure to timely appear forfeits any interest the person may have in the property or proceeds seized, and no person after failing to timely appear may contest destruction or forfeiture.

(f)  If a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. Unless the person proves by a preponderance of the evidence that the property or proceeds is not gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, gambling proceeds, prohibited weapon, obscene device or material, child sexual abuse material [~~pornography~~], criminal instrument, scanning device or re-encoder, or dog-fighting equipment and that the person [~~he~~] is entitled to possession, the magistrate shall dispose of the property or proceeds in accordance with Subsection [~~Paragraph~~] (a) [~~of this article~~].

(g)  For purposes of this article:

(1)  "criminal instrument" has the meaning defined in the Penal Code;

(2)  "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3)  "prohibited weapon" has the meaning defined in the Penal Code;

(4)  "dog-fighting equipment" means:

(A)  equipment used for training or handling a fighting dog, including a harness, treadmill, cage, decoy, pen, house for keeping a fighting dog, feeding apparatus, or training pen;

(B)  equipment used for transporting a fighting dog, including any automobile[~~,~~] or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog;

(C)  equipment used to promote or advertise an exhibition of dog fighting, including a printing press or similar equipment, paper, ink, or photography equipment; or

(D)  a dog trained, being trained, or intended to be used to fight with another dog;

(5)  "obscene device" and "obscene" have the meanings assigned by Section 43.21, Penal Code;

(6)  "re-encoder" has the meaning assigned by Section 522.001, Business & Commerce Code;

(7)  "scanning device" has the meaning assigned by Section 522.001, Business & Commerce Code; and

(8)  "obscene material" and "child sexual abuse material [~~pornography~~]" include digital images and the media and equipment on which those images are stored.

(h)  No provider of an electronic communication service or of a remote computing service to the public shall be held liable for an offense involving obscene material or child sexual abuse material [~~pornography~~] under this article [~~section~~] on account of any action taken in good faith in providing that service.

SECTION 2.07.  Section 2(a), Article 38.37, Code of Criminal Procedure, is amended to read as follows:

(a)  Subsection (b) applies only to the trial of a defendant for:

(1)  an offense under any of the following provisions of the Penal Code:

(A)  Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Sex Trafficking of a Child);

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

(C)  Section 21.11 (Indecency With a Child);

(D)  Section 22.011(a)(2) (Sexual Assault of a Child);

(E)  Sections 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child);

(F)  Section 33.021 (Online Solicitation of a Minor);

(G)  Section 43.25 (Sexual Performance by a Child); or

(H)  Section 43.26 (Possession or Promotion of Child Sexual Abuse Material [~~Pornography~~]), Penal Code; or

(2)  an attempt or conspiracy to commit an offense described by Subdivision (1).

SECTION 2.08.  Article 38.45(a), Code of Criminal Procedure, is amended to read as follows:

(a)  During the course of a criminal hearing or proceeding, the court may not make available or allow to be made available for copying or dissemination to the public property or material:

(1)  that constitutes child sexual abuse material [~~pornography~~], as described by Section 43.26(a)(1), Penal Code;

(2)  the promotion or possession of which is prohibited under Section 43.261, Penal Code; or

(3)  that is described by Section 2 or 5, Article 38.071, of this code.

SECTION 2.09.  Article 39.15(a), Code of Criminal Procedure, is amended to read as follows:

(a)  In the manner provided by this article, a court shall allow discovery under Article 39.14 of property or material:

(1)  that constitutes child sexual abuse material [~~pornography~~], as described by Section 43.26(a)(1), Penal Code;

(2)  the promotion or possession of which is prohibited under Section 43.261, Penal Code; or

(3)  that is described by Section 2 or 5, Article 38.071, of this code.

SECTION 2.10.  Article 42A.251(2), Code of Criminal Procedure, is amended to read as follows:

(2)  "Sex offender" means a person who has been convicted of, or has entered a plea of guilty or nolo contendere for, an offense under any one of the following provisions of the Penal Code:

(A)  Section 20.04(a)(4) (Aggravated Kidnapping), if the person committed the offense with the intent to violate or abuse the victim sexually;

(B)  Section 21.08 (Indecent Exposure);

(C)  Section 21.11 (Indecency with a Child);

(D)  Section 22.011 (Sexual Assault);

(E)  Section 22.021 (Aggravated Sexual Assault);

(F)  Section 25.02 (Prohibited Sexual Conduct);

(G)  Section 30.02 (Burglary), if:

(i)  the offense is punishable under Subsection (d) of that section; and

(ii)  the person committed the offense with the intent to commit a felony listed in this subdivision;

(H)  Section 43.25 (Sexual Performance by a Child); or

(I)  Section 43.26 (Possession or Promotion of Child Sexual Abuse Material [~~Pornography~~]).

SECTION 2.11.  Article 62.001(5), Code of Criminal Procedure, is amended to read as follows:

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

(A)  a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.09 (Bestiality), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B)  a violation of Section 43.04 (Aggravated promotion of prostitution), 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child sexual abuse material [~~pornography~~]), Penal Code;

(B-1)  a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c-1)(2) of that section;

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

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

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

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

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

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

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

(H)  a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E), (G), (J), (K), or (L), but not if the violation results in a deferred adjudication;

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

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

(K)  a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code; or

(L)  a violation of Section 20A.03 (Continuous trafficking of persons), Penal Code, if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code.

SECTION 2.12.  Section 201.062(a), Estates Code, is amended to read as follows:

(a)  A probate court may enter an order declaring that the parent of a child under 18 years of age may not inherit from or through the child under the laws of descent and distribution if the court finds by clear and convincing evidence that the parent has:

(1)  voluntarily abandoned and failed to support the child in accordance with the parent's obligation or ability for at least three years before the date of the child's death, and did not resume support for the child before that date;

(2)  voluntarily and with knowledge of the pregnancy:

(A)  abandoned the child's mother beginning at a time during her pregnancy with the child and continuing through the birth;

(B)  failed to provide adequate support or medical care for the mother during the period of abandonment before the child's birth; and

(C)  remained apart from and failed to support the child since birth; or

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

(A)  Section 19.02 (murder);

(B)  Section 19.03 (capital murder);

(C)  Section 19.04 (manslaughter);

(D)  Section 21.11 (indecency with a child);

(E)  Section 22.01 (assault);

(F)  Section 22.011 (sexual assault);

(G)  Section 22.02 (aggravated assault);

(H)  Section 22.021 (aggravated sexual assault);

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

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

(K)  Section 25.02 (prohibited sexual conduct);

(L)  Section 43.25 (sexual performance by a child); or

(M)  Section 43.26 (possession or promotion of child sexual abuse material [~~pornography~~]).

SECTION 2.13.  Section 161.001(b), Family Code, is amended to read as follows:

(b)  The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1)  that the parent has:

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

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

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

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

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

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

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

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

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

(J)  been the major cause of:

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

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

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

(L)  been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i)  Section 19.02 (murder);

(ii)  Section 19.03 (capital murder);

(iii)  Section 19.04 (manslaughter);

(iv)  Section 21.11 (indecency with a child);

(v)  Section 22.01 (assault);

(vi)  Section 22.011 (sexual assault);

(vii)  Section 22.02 (aggravated assault);

(viii)  Section 22.021 (aggravated sexual assault);

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

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

(xi)  Section 25.02 (prohibited sexual conduct);

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

(xiii)  Section 43.26 (possession or promotion of child sexual abuse material [~~pornography~~]);

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

(xv)  Section 20A.02(a)(7) or (8) (trafficking of persons); and

(xvi)  Section 43.05(a)(2) (compelling prostitution);

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

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

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

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

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

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

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

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

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

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

(i)  conviction of an offense; and

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

(R)  been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;

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

(T)  been convicted of:

(i)  the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

(ii)  criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);

(iii)  criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or

(iv)  the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

(U)  been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; and

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

SECTION 2.14.  Section 261.001(1), Family Code, is amended to read as follows:

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

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

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

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

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

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

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

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

(H)  causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child:

(i)  is obscene as defined by Section 43.21, Penal Code;[~~,~~] or

(ii)  constitutes child sexual abuse material [~~pornographic~~];

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

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

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

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

(M)  forcing or coercing a child to enter into a marriage.

SECTION 2.15.  Section 262.2015(b), Family Code, is amended to read as follows:

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

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

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

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

(A)  Section 19.02 (murder);

(B)  Section 19.03 (capital murder);

(C)  Section 19.04 (manslaughter);

(D)  Section 21.11 (indecency with a child);

(E)  Section 22.011 (sexual assault);

(F)  Section 22.02 (aggravated assault);

(G)  Section 22.021 (aggravated sexual assault);

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

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

(J)  Section 25.02 (prohibited sexual conduct);

(K)  Section 43.25 (sexual performance by a child);

(L)  Section 43.26 (possession or promotion of child sexual abuse material [~~pornography~~]);

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

(N)  Section 43.05(a)(2) (compelling prostitution); or

(O)  Section 20A.02(a)(7) or (8) (trafficking of persons);

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

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

(6)  the parent has been convicted for:

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

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

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

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

(7)  the parent's parental rights with regard to another child of the parent have been involuntarily terminated; or

(8)  the parent is required under any state or federal law to register with a sex offender registry.

SECTION 2.16.  Section 773.0614(c), Health and Safety Code, is amended to read as follows:

(c)  A certificate holder's certificate shall be revoked if the certificate holder has been convicted of or placed on deferred adjudication community supervision or deferred disposition for:

(1)  an offense listed in Article 42A.054(a)(2), (3), (4), (7), (8), (9), (11), or (17) [~~(16)~~], Code of Criminal Procedure; or

(2)  an offense, other than an offense described by Subdivision (1), committed on or after September 1, 2009, for which the person is subject to registration under Chapter 62, Code of Criminal Procedure.

SECTION 2.17.  Section 773.06141(a), Health and Safety Code, is amended to read as follows:

(a)  The department may suspend, revoke, or deny an emergency medical services provider license on the grounds that the provider's administrator of record, employee, or other representative:

(1)  has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of the administrator, employee, or representative, other than an offense described by Section 542.304, Transportation Code;

(2)  has been convicted of or placed on deferred adjudication community supervision or deferred disposition for an offense, including:

(A)  an offense listed in Article 42A.054(a)(2), (3), (4), (7), (8), (9), (11), or (17) [~~(16)~~], Code of Criminal Procedure; or

(B)  an offense, other than an offense described by Subdivision (1), for which the person is subject to registration under Chapter 62, Code of Criminal Procedure; or

(3)  has been convicted of Medicare or Medicaid fraud, has been excluded from participation in the state Medicaid program, or has a hold on payment for reimbursement under the state Medicaid program under Subchapter C, Chapter 531, Government Code.

SECTION 2.18.  Section 20A.02(a), Penal Code, is amended to read as follows:

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

(1)  traffics another person with the intent that the trafficked person engage in forced labor or services;

(2)  receives a benefit from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;

(3)  traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:

(A)  Section 43.02 (Prostitution);

(B)  Section 43.03 (Promotion of Prostitution);

(B-1)  Section 43.031 (Online Promotion of Prostitution);

(C)  Section 43.04 (Aggravated Promotion of Prostitution);

(C-1)  Section 43.041 (Aggravated Online Promotion of Prostitution); or

(D)  Section 43.05 (Compelling Prostitution);

(4)  receives a benefit from participating in a venture that involves an activity described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);

(5)  traffics a child with the intent that the trafficked child engage in forced labor or services;

(6)  receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services;

(7)  traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

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

(B)  Section 21.11 (Indecency with a Child);

(C)  Section 22.011 (Sexual Assault);

(D)  Section 22.021 (Aggravated Sexual Assault);

(E)  Section 43.02 (Prostitution);

(F)  Section 43.03 (Promotion of Prostitution);

(F-1)  Section 43.031 (Online Promotion of Prostitution);

(G)  Section 43.04 (Aggravated Promotion of Prostitution);

(G-1)  Section 43.041 (Aggravated Online Promotion of Prostitution);

(H)  Section 43.05 (Compelling Prostitution);

(I)  Section 43.25 (Sexual Performance by a Child);

(J)  Section 43.251 (Employment Harmful to Children); or

(K)  Section 43.26 (Possession or Promotion of Child Sexual Abuse Material [~~Pornography~~]); or

(8)  receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

ARTICLE 3. TRANSITION AND EFFECTIVE DATE

SECTION 3.01.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3.02.  This Act takes effect September 1, 2021.