

BILL ANALYSIS

Senate Research Center

H.B. 8
By: Riddle et al. (Deuell)
Criminal Justice
3/14/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 8 enacts tougher penalties on sexual predators who target children. This bill imposes a 25-year minimum sentence for sexually violent offenses against children under 14 years of age, eliminates eligibility for parole for certain sex offenders, and makes a second conviction of a sexually violent offense against a child under 14 years of age a capital felony. In addition, S.B. 5 provides for global positioning system (GPS) monitoring for offenders committed under the sexually violent predator statutes, extends the statute of limitations for sexually violent offenses against children under the age of 14 to 20 years past his or her 18th birthday, and clarifies that harboring a sex offender in violation of registration is an offense punishable by up to a third degree felony.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CREATION OF OFFENSE AND PROSECUTION AND PUNISHMENT OF OFFENSE

SECTION 1.01. Requires this Act to be known as the Jessica Lunsford Act.

SECTION 1.02. Amends Chapter 21, Penal Code, by adding Section 21.02, as follows:

Sec. 21.02. CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN.

(a) Defines "child."

(b) Provides that a person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits an offense listed in Subsection (c) more than once or commits more than one offense listed in Subsection (c), regardless of whether the offenses are committed against one or more victims; or

(2) at the time of the commission of each of the offenses, the actor is 17 years of age or older and the victim of the offense is a child younger than 14 years of age.

(c) Provides that any of the following offenses constitute an element of the offense described by Subsection (b):

(1) aggravated kidnapping under Section 20.04(a)(4) if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(2) indecency with a child under Section 21.22(a)(1);

(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4); and

(6) sexual performance by a child under Section 43.25.

(d) Provides that members of the jury, if the jury is the trier of fact, are not required to agree unanimously on which specific offenses listed in Subsection (c) were committed by the defendant or when those offenses were committed. Requires the jury to agree unanimously that the defendant, during a period that is 30 or more days in duration, committed an offense listed in Subsection (c) more than one time or committed more than one offense listed in Subsection (c).

(e) Prohibits an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) from being prosecuted in the same criminal action unless the offense listed in Subsection (c) is charged in the alternative or occurred outside the period in which the offense alleged under Subsection (b) was committed.

(f) Prohibits a defendant from being charged with more than one count under Subsection (b) if all of the specific offenses listed in Subsection (c) that are alleged to have been committed are alleged to have been committed against a single victim.

(g) Provides that it is an affirmative defense to prosecution under this section that the actor:

(1) was not more than five years older than the victim of the offense, if the offense is alleged to have been committed against only one victim, or the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;

(2) did not use duress, force, or a threat against a victim at the time of the commission of any of the offenses alleged as an element of the offense under Subsection (b); and

(3) at the time of the commission of any of the offenses alleged as an element of the offense under Subsection (b) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or a section of this code described by Subsection (c).

(h) Provides that an offense under this section, except as provided by Subsection (i), is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice (TDCJ) for life, or for any term of not more than 99 years or less than 25 years.

(i) Requires that the defendant on conviction, if it is shown on the trial of an offense under this section that the defendant has once before been convicted of an offense under this section, be punished for a capital felony.

SECTION 1.03. Amends Chapter 37, Code of Criminal Procedure, by adding Article 37.072, as follows:

Art. 37.072. PROCEDURE IN REPEAT SEX OFFENDER CAPITAL CASE. Sec. 1. Requires the judge to sentence the defendant to life imprisonment without parole, if a defendant is found guilty in a capital felony case punishable under Section 21.02(i), Penal Code, in which the state does not seek the death penalty.

Sec. 2. (a)(1) Requires the court to conduct a separate sentencing proceeding to determine whether the defendant shall to be sentenced to death or life imprisonment without parole if a defendant is tried for an offense punishable under Section 21.02(i), Penal Code, in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense. Requires the proceeding to be conducted in the trial court and, except as provided by Article 44.29(d) of this code, before the trial jury as soon as practicable. Authorizes evidence to be presented, in the proceeding, by the state and the defendant or the defendant's counsel as to any matter that the court considers relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. Prohibits this subdivision from being construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. Requires the state and the defendant or the defendant's counsel to be permitted to present argument for or against sentence of death. Provides that the introduction of evidence of extraneous conduct is governed by the notice requirements of Section 3(g), Article 37.07. Prohibits the court, the attorney representing the state, the defendant, or the defendant's counsel from informing a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (b) or (e).

(2) Prohibits evidence from being offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct, notwithstanding Subdivision (1).

(b) Requires the court to submit the following issues to the jury, on conclusion of the presentation of the evidence:

(1) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(2) in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, whether the defendant actually engaged in the conduct prohibited by Section 21.02, Penal Code, or did not actually engage in the conduct prohibited by that section but intended that the offense be committed against the victim or another intended victim.

(c) Requires the state to prove beyond a reasonable doubt each issue submitted under Subsection (b) of this section, and requires the jury to return a special verdict of "yes" or "no" on each issue submitted under Subsection (b) of this section.

(d) Requires the court to charge the jury that:

(1) in deliberating on the issues submitted under Subsection (b) of this section, the jury is required to consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty;

(2) the jury is prohibited from answering any issue submitted under Subsection (b) of this section "yes" unless it agrees unanimously and the jury is prohibited from answering any issue "no" unless 10 or more jurors agree; and

(3) members of the jury need not agree on what particular evidence supports a negative answer to any issue submitted under Subsection (b) of this section.

(e)(1) Requires the court to instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), the jury is required to answer whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) Requires the court to:

(A) instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in TDCJ for life without parole; and

(B) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release from TDCJ on parole.

(f) Requires the court to charge the jury that in answering the issue submitted under Subsection (e) of this section, the jury:

(1) is required to answer the issue "yes" or "no";

(2) is prohibited from answering the issue "no" unless it agrees unanimously and is prohibited from answering the issue "yes" unless 10 or more jurors agree;

(3) need not agree on what particular evidence supports an affirmative finding on the issue; and

(4) is required to consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

(g) Requires the court to sentence the defendant to death if the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on an issue submitted under Subsection (e)(1). Requires the court to sentence the defendant to imprisonment in TDCJ for life without parole if the jury returns a negative finding on any issue submitted under Subsection (b) or an affirmative finding on an issue submitted under Subsection (e)(1) or is unable to answer any issue submitted under Subsection (b) or (e).

(h) Requires the judgment of conviction and sentence of death to be subject to automatic review by the Court of Criminal Appeals.

SECTION 1.04. Amends Article 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. Authorizes felony indictments to be presented within these time limits, and not afterward:

(1) no limitation:

(A) murder and manslaughter;

(B) sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C) continuous sexual abuse of young child or children under Section 21.02, Penal Code, sexual assault, if during the investigation of the offense

biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained;

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

(E) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(4) five years from the date of the commission of the offense:

(A) theft or robbery, rather than burglary;

(B) except as provided by Subdivision (5), kidnapping or burglary;

(C) injury to a child, elderly, individual, or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;

(D) abandoning or endangering a child; or

(E) insurance fraud;

(5) except as provided by Subdivision (1), 20 years from the 18th birthday of the victim of one of the following offenses, if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed:

(A) sexual performance by a child under Section 43.25, Penal Code;

(B) aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(C) burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

(6) except as provided by Subdivision (1), for continuous sexual abuse of young child or children under Section 21.02, Penal Code, 20 years, rather than ten years, from the 18th birthday of:

(A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or

(B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim. Deletes indecency with a child under Section 21.11(a)(1) or (2), Penal Code, and sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code.

(7) Redesignated from existing Paragraph (6).

SECTION 1.05. Amends Section 508.145, Government Code, by adding Subsection (c-1), as follows:

(c-1) Provides that an inmate serving a sentence for an offense under Section 21.02, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30

calendar years, whichever is less, but provides that in no event is the inmate eligible for release on parole in less than 25 calendar years.

SECTION 1.06. Amends Section 508.149(a), Government Code, to include an offense, rather than a second degree felony or a third degree felony, under Section 21.11, Penal Code; a felony, rather than a second degree felony, under Section 22.011, Penal Code; and an offense under Section 21.02, Penal Code, in the list of offenses for which an inmate is prohibited from being released to mandatory supervision.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends Section 16.0045(a), Civil Practice and Remedies Code, to include Section 21.02, Penal Code in the list of specified offenses for which a person must bring suit for personal injury not later than five years after the day the cause of action accrues.

SECTION 2.02. Amends Section 33.013(b), Civil Practice and Remedies Code, to include Section 21.02 in the list of provisions of the Penal Code for which a defendant is held jointly and severally liable if the defendant acted in concert with another person with the specific intent to do harm to others.

SECTION 2.03. Amends Section 41.008(c), Civil Practice and Remedies Code, to include Section 21.02 (continuous sexual abuse of young child or children) in the list of provisions of the Penal Code to which this section does not apply.

SECTION 2.04. Amends Section 125.0015(a), Civil Practice and Remedies Code, to include continuous sexual abuse of young child or children as described by Section 21.02, Penal Code, in the list of activities constituting a common nuisance.

SECTION 2.05. Amends Article 7A.01(a), Code of Criminal Procedure, to include Section 21.02, Penal Code, in the list of offenses for which a person who is the victim is authorized to file an application for a protective order under this chapter (Protective Order for Victim of Sexual Assault) without regard to the relationship between the applicant and the alleged offender.

SECTION 2.06. Amends Section 5(a), Article 11.071, Code of Criminal Procedure, to include Article 37.072, in the list of articles violated for which a court is prohibited from considering the merits of or granting relief based on a subsequent application for a writ of habeas corpus, unless the application contains sufficient specific facts establishing clear and convincing evidence.

SECTION 2.07. Amends Article 15.051(a), Code of Criminal Procedure, to include Section 21.02, Penal Code, in the list of offenses for which a peace officer or an attorney representing the state is prohibited from requiring a polygraph examination of a person who charges or seeks to charge in a complaint the commission of one of the offenses.

SECTION 2.08. Amends Article 17.03(b), Code of Criminal Procedure, to include Section 21.02 in the sections listed in the Penal Code for which only the court before whom the case is pending is authorized to release a defendant on personal bond.

SECTION 2.09. Amends Article 17.032(a), Code of Criminal Procedure, to include Section 21.02 in the sections listed in the Penal Code that constitute a "violent offense."

SECTION 2.10. Amends Article 17.091, Code of Criminal Procedure, to require a judge or magistrate to provide to the attorney representing the state, reasonable notice of the proposed bail reduction; and on request of the attorney representing the state or the defendant or the defendant's counsel, an opportunity for a hearing concerning the proposed bail reduction, before the judge or magistrate reduces the amount of bail set for a defendant charged with an offense listed in Section 3g, Article 42.12, or an offense described by Article 62.001(5), rather than 62.01(5).

SECTION 2.11. Amends Article 18.021(a), Code of Criminal Procedure, to authorize a search warrant to be issued to search for and photograph a child who is alleged to be the victim of

certain crimes as prohibited, rather than defined, by certain sections of the Penal Code, or continuous sexual abuse of young child or children as prohibited by Section 21.02, Penal Code.

SECTION 2.12. Amends Article 21.31(a), Code of Criminal Procedure, to require a person who is indicted for or who waives indictment for an offense under Section 21.02, Penal Code, in addition to other indicated persons, to submit to a medical procedure to determine whether the person has a sexually transmitted disease, Advanced Immune Deficiency Syndrome (AIDS), or Human Immunodeficiency Virus (HIV).

SECTION 2.13. Amends Section 3, Article 31.08, Code of Criminal Procedure, to exempt a review of a death sentence under Section 2(h), Article 37.071 (Procedure in Capital Case), or Section 2(h), Article 37.072, rather than Section 37.071(h), from the docketing requirements of this section.

SECTION 2.14. Amends Section 2(b), Article 37.07, Code of Criminal Procedure, to exempt a finding of guilt as provided by Article 37.072 from the requirement under this section that the judge assess the applicable punishment.

SECTION 2.15. Amends Section 4, Article 37.07, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Exempts the jury in the penalty phase of a trial in which the jury is to assess the punishment from being charged as provided for in this subsection in writing by the court if the defendant was convicted of an offense under Section 21.02, Penal Code.

(b) Exempts the jury in the penalty phase of a trial in which the jury is to assess the punishment from being charged as provided for in this subsection in writing by the court if the defendant was found guilty of an offense under Section 21.02, Penal Code.

(e) Requires the court, in the penalty phase of a trial for an offense under Section 21.02, Penal Code, other than an offense punishable under Subsection (i) of that section, in which the jury is to assess the punishment of a found-guilty defendant to charge the jury in the manner set forth in this subsection, which does not mention to the jury the possibility of a reduction of time spent in prison due to good conduct.

SECTION 2.16. Amends Section 1, Article 38.071, Code of Criminal Procedure to add an offense under Section 21.02, Penal Code, to the offenses for which this article applies at a hearing.

SECTION 2.17. Amends Article 42.017, Code of Criminal Procedure, to require, in a trial for an offense under Section 21.02, Penal Code, in addition to other offenses, the judge to make an affirmative finding of fact and enter it into the judgment in the case if the judge makes a determination as provided for in this article.

SECTION 2.18. Amends Section 5(d), Article 42.12, Code of Criminal Procedure, to prohibit the judge from granting deferred adjudication for a defendant charged with an offense under Section 21.02, Penal Code, in addition to other offenses. Makes conforming changes.

SECTION 2.19. Amends Article 44.251, Code of Criminal Procedure, by amending Subsections (a) and (c) and adding Subsection (d), as follows:

(a) Requires the court of criminal appeals to reform a death sentence to life imprisonment without parole if the court finds that there is legally insufficient evidence to answer an issue submitted to the jury under Section 2(b), Article 37.072, or a submission under other law provided for under this subsection. Makes a nonsubstantive change.

(c) Requires a new sentencing trial to be conducted in the manner required by Article 44.29(d), as applicable, or other law provided for under this subsection, under certain circumstances.

(d) Requires the court of criminal appeals to reform a death sentence imposed under Section 21.02(i), Penal Code, to a sentence of life imprisonment in TDCJ without parole if the United States Supreme Court finds that such a sentence under that section violates the United States Constitution and issues an order not inconsistent with this article.

SECTION 2.20. Amends Article 44.29, Code of Criminal Procedure, by adding Subsection (d), to require a court to commence a new punishment hearing under Article 37.072, as if a finding of guilt had been returned, if any court sets aside or invalidates, on the basis of any error affecting punishment only, a defendant's death sentence for an offense under Section 21.02(i), Penal Code. Prohibits the court from setting the conviction aside. Requires the court to empanel a jury for the sentencing stage of the trial in the same manner as a jury is to be empanelled by the court in a similar trial for the same offense. Requires the court to permit both the state and the defendant to introduce evidence as permitted by Article 37.072 at the new hearing.

SECTION 2.21. Amends Article 56.01, Code of Criminal Procedure, by adding Subdivision (2-a), to define "sexual assault."

SECTION 2.22. Amends Article 56.02(a), Code of Criminal Procedure, to entitle a victim to the right, in addition to other rights provided for in this subsection, to counseling, on request, regarding AIDS and HIV, if the victim is a victim of an offense under Section 21.02, Penal Code.

SECTION 2.23. (a) Reenacts and amends Article 62.001(5), Code of Criminal Procedure, as renumbered from former Article 62.01(5), Code of Criminal Procedure, and amended by Chapter 1008, Acts of the 79th Legislature, Regular Session, 2005, to conform to an amendment to former Article 62.01(5) by Chapter 1273, Acts of the 79th Legislature, Regular Session, 2005, to redefine "reportable conviction or adjudication."

(b) Repealer: Section 2, Chapter 1273, Acts of the 79th Legislature, Regular Session, 2005 (regarding the definition of "reportable conviction or adjudication").

SECTION 2.24. Amends Article 62.001(6), Code of Criminal Procedure, to redefine "sexually violent offense."

SECTION 2.25. Amends Article 102.0186(a), Code of Criminal Procedure, to require a person convicted under Section 21.02, Penal Code, in addition to other sections, to pay \$100 upon conviction.

SECTION 2.26. Amends Section 25.0341(a), Education Code, as added by Chapter 997, Acts of the 79th Legislature, Regular Session, 2005, to apply the section to a student convicted of continuous sexual abuse of a young child or children under Section 21.02, Penal Code, in addition to other students as provided for in this subsection.

SECTION 2.27. Amends Section 37.007(a), Education Code, to require a student to be expelled from a school if the student engages in continuous sexual abuse of a young child or children under Section 21.02, Penal Code.

SECTION 2.28. Amends Section 33.009, Family Code, to redesignate the Department of Protective Services as the Department of Family and Protective Services (DFPS) and make a conforming change.

SECTION 2.29. Amends Section 33.010, Family Code, to redesignate the Department of Protective Services as DFPS and make a conforming change.

SECTION 2.30. Amends Section 156.104, Family Code, as follows:

(a) Provides that the conviction of a conservator for an offense under Section 21.02, Penal Code, or the conviction of a conservator is a material and substantial change to circumstances sufficient to justify a temporary order and modification of an existing court order or portion of a decree that provides for the appointment of a conservator or that sets the terms and conditions of a conservatorship or for the possession of or access to a child.

(b) Provides that a person commits a Class B misdemeanor if the person files a suit to modify an order or portion of a decree based on the grounds permitted under Subsection (a) and the person knows that the person against whom the motion is filed has not been convicted of an offense under Section 21.02, Penal Code.

SECTION 2.31. Amends Section 161.001, Family Code, to authorize the court to order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has 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 Section 21.02, Penal Code, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of Section 21.02, Penal Code.

SECTION 2.32. Amends Section 161.007, Family Code, to authorize the court to order the termination of the parent-child relationship of a parent and child if the court find that the parent has been convicted of an offense committed under Section 21.02, Penal Code.

SECTION 2.33. Amends Section 261.001(1), Family Code, to redefine "abuse."

SECTION 2.34. Amends Section 262.2015(b), Family Code, to authorize the court to find under Subsection (a) (relating to the court's authority to make reasonable efforts to return the child to a parent and accelerating a trial) that a parent has subjected the child to aggravated circumstances if the parent has engaged in conduct against a child that would constitute an offense under Section 21.02, Penal Code.

SECTION 2.35. Amends Section 411.1471(a), Government Code, to make a conforming change.

SECTION 2.36. Amends Section 420.003(4), Government Code, to redefine "sexual assault."

SECTION 2.37. Amends Section 499.027(b), Government Code, to provide that an inmate is not eligible under this subchapter to be considered for release to intensive supervision parole if the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense under Section 21.02, Penal Code.

SECTION 2.38. Amends Section 501.061(a), Government Code, to authorize a physician employed or retained by DFPS to perform an orchietomy on an inmate if the inmate has been convicted of an offense under Section 21.02, Penal Code, has been previously convicted under that section or certain others, and meets certain other requirements.

SECTION 2.39. Amends Section 508.046, Government Code, to require all members of the board of pardons and paroles to vote on the release on parole of the inmate, with two-thirds in favor of the release, in order to release on parole an inmate who was convicted of an offense under Section 21.02, Penal Code.

SECTION 2.40. Amends Section 508.117(g), Government Code, by adding Subdivision (2-a) to define "sexual assault."

SECTION 2.41. Amends Section 508.151(a), Government Code, to prohibit an inmate who has been convicted of an offense under Section 21.02, Penal Code, from being designated a presumptive parole date for the purpose of being diverted to a halfway house under Section 508.118.

SECTION 2.42. Amends Section 508.187(a), Government Code, to make a conforming change.

SECTION 2.43. Amends Section 508.189(a), Government Code, as follows:

(a) Requires a parole panel to require as a condition of parole or mandatory supervision that a releasee convicted of an offense under certain sections, including Section 21.02,

Penal Code, pay to the pardon and paroles division a supervision fee of five dollars each month during the period of parole supervision.

SECTION 2.44. Amends Section 242.126(c), Health and Safety Code, to make a conforming change regarding an investigation of abuse against a resident of certain institutions.

SECTION 2.45. Amends Section 250.006(a), Health and Safety Code, as follows:

(a) Prohibits a person for whom the facility is entitled to obtain criminal history record information from being employed in a facility if the person has been convicted of certain offenses, including an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children).

SECTION 2.46. Amends Section 841.002(8), Health and Safety Code, to redefine "sexually violent offense."

SECTION 2.47. Amends Section 301.4535(a), Occupations Code, to require the board to suspend a or refuse to issue a nurse license on the grounds that the applicant for that license has been initially convicted of continuous sexual abuse of a young child or children under Section 21.02, Penal Code.

SECTION 2.48. Amends Section 3.03(b), Penal Code, to make a conforming change.

SECTION 2.49. Amends Section 12.35(c), Penal Code, to make a conforming change.

SECTION 2.50. Amends Section 15.031(b), Penal Code, to make a conforming change.

SECTION 2.51. Amends Section 19.03(a), Penal Code, to make a conforming change.

SECTION 2.52. Amends Section 38.17(a), Penal Code, to make a conforming change.

SECTION 2.53. Amends Article 26.13, Code of Criminal Procedure, by adding Subsection (j), as follows:

(j) Prohibits a plea of guilty or a plea of nolo contendere from being accepted by a court if the plea is entered with respect to a sexually violent offense and contains any provision that authorizes the destruction of evidence that had previously been subjugated to a forensic analysis. Defines "sexually violent offense."

SECTION 2.54. Provides that Article 26.13(j), Code of Criminal Procedure, as added by this Act, applies to a plea entered on or after the effective date of this Act regardless of when the offense occurred.

SECTION 2.55. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.351, as follows:

Art. 38.351. CERTAIN DEFENDANTS ENTITLED TO FORENSIC ANALYSIS. (a) Authorizes a defendant charged with an offense punishable as a capital felony under Section 21.02(i), Penal Code, to request and entitles said defendant to a forensic analysis of any biological matter collected during the investigation of the offense.

(b) Requires the state to pay the cost of any forensic analysis requested or performed under this article.

SECTION 2.56. Amends Chapter 39, Penal Code, by adding Section 39.07, as follows:

Sec. 39.07. FAILURE TO REPORT CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN. (a) Provides that a person commits an offense if the person is an officer or employee of the state, any agency or entity thereof, and any political subdivision of the state and knows of the commission of an offense under Section 21.02, Penal Code, and fails to report that offense to the appropriate law enforcement authority.

(b) Provides that an offense under this section is a second degree felony.

(c) Provides that a conspiracy to commit an offense under this section is a second degree felony.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. (a) Makes application of this Act prospective, except as provided by Subsections (b) and (c).

(b) Provides that the change in law made by this Act to Section 841.002, Health and Safety Code, applies to an individual who is serving a sentence in the Texas Department of Criminal Justice or committed to DSHS on, or after September 1, 2007, for an offense committed before, on, or after the effective date of this Act .

(c) Provides that the changes in law made to Article 12.01, Code of Criminal Procedure, does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act.

SECTION 3.02. Effective date: September 1, 2007.