PD-0474-18
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 8/6/2018 3:48 PM
Accepted 8/7/2018 11:07 AM
DEANA WILLIAMSON
CLERK

NO. PD-0474-18

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
8/7/2018
DEANA WILLIAMSON, CLERK

ADRIAN PARKER, Appellant

v.

THE STATE OF TEXAS, Appellee

Appeal from 188th District Court of Gregg County
On Review of Cause No. 06-17-00167-CR
In the Court of Appeals of Texas, Sixth Judicial District at Texarkana

****

APPELLANT'S BRIEF ON THE MERITS

****

Hough-Lewis ("Lew") Dunn
P.O. Box 2226
Longview, TX
Tel. 903-757-6711
Fax 903-757-6712
Email: dunn@texramp.net
Texas State Bar #06244600
Counsel for Appellant
Adrian Jerome Parker

IDENTITY OF JUDGE, PARTIES, AND COUNSEL

The State has correctly identified the judge, parties, and counsel.

TABLE OF CONTENTS

PAGE

IDENTITY OF JUDGE, PARTIES, AND COUNSEL …… ii

TABLE OF CONTENTS …… iii

INDEX OF AUTHORITIES …… vii

STATEMENT OF THE CASE …… 1

STATEMENT REGARDING ORAL ARGUMENT …….. 2

REPLIES TO GROUNDS FOR REVIEW …… 2

REPLY TO FIRST GROUND: The State erroneously tries to invent an offense that the Texas Legislature did not enact.

REPLY TO SECOND GROUND: The State erroneously tries to include a lesser-included offense within a non-existent statute.

STATEMENT OF FACTS ……. 2

SUMMARY OF THE ARGUMENT …… 3

ARGUMENT AND AUTHORITIES …….. 3

REPLY TO FIRST GROUND: The State erroneously tries to …. invent an offense that the Texas Legislature did not enact 3

REPLY TO SECOND GROUND: The State erroneously tries to … include a lesser-included offense into a non-existent statute. 17

PAGE

PRAYER FOR RELIEF ……. 23

CERTIFICATE OF SERVICE …..…… 24

CERTIFICATE OF COMPLIANCE …….. 25

APPENDICES

Appendix 1 Act of 1977, 65th Leg., R.S., ch. 346, § 1, 1977 Tex. Gen. Laws 922-24 (S.B. 151) (eff. June 10, 1977)

Appendix 2 Acts of 1981, 67th Leg., R.S., ch. 587, §§ 1 to 3, 1981 Tex. Gen. Laws 2373-75 (H. B. 21) (eff. Sept. 1, 1981)

Appendix 3 Acts of 1989, 71st Leg., R.S., ch. 782, § 2, 1989 Tex. Gen. Laws 3468-69 (H. B. 5) (eff. Sept. 1, 1989)

Appendix 4 Acts of 1991, 72nd Leg., R.S., ch. 555, § 1, 1991 Tex. Gen. Laws 1968-70 (H. B. 549) (eff. Sept. 1, 1991)

Appendix 5 Acts of 1993, 73rd Leg., R.S., ch. 761, § 3, 1993 Tex. Gen. Laws 2966-70 (H. B. 354) (eff. Sept. 1, 1993)

Appendix 6 Acts of 1993, 73rd Leg., R.S., ch. 900, § 1.01, 1993 Tex. Gen. Laws 3586-3766 (S. B. 1067) (eff. Sept. 1, 1994)

Appendix 7 Acts of 1995, 74th Leg., R.S., ch. 318, § 24, 1995 Tex. Gen. Laws 2734-63 (S.B. 15) (eff. Sept. 1, 1995)

Appendix 8 Acts of 1997, 75th Leg., R.S., ch. 189, § 9, 1997 Tex. Gen. Laws 1045-58 (H. B 1185) (eff. May 21, 1997)

Appendix 9 Acts of 1999, 76th Leg., R.S., ch. 685, § 8, 1999 Tex. Gen. Laws 3256-58 (H. B. 668) (eff. Sept. 1, 1999)

Appendix 10 Acts of 2003, 78th Leg., R.S., ch. 641, § 3, 2003 Tex. Gen. Laws 2045-46 (H. B. 2096) (eff. Sept. 1, 2003)

Appendix 11 Acts of 2005, 79th Leg., R.S., ch. 1162, § 5, 2003 Tex. Gen. Laws 3802-07 (H. B. 3376) (eff. Sept. 1, 2005)

Appendix 12 Acts of 2007, 80th Leg., R.S., ch. 1163, § 2, 2007 Tex. Gen. Laws 3991-92 (H. B. 126) (eff. Sept. 1, 2007)

Appendix 13 Acts of 2009, 81st Leg., R.S., ch. 153, § 2, 2009 Tex. Gen. Laws 483-86 (S. B. 2225) (eff. Sept. 1, 2009)

Appendix 14 Acts of 2009, 81st Leg., R.S., ch. 1130, § 1, 2009 Tex. Gen. Laws 3119-33 (H. B. 2086) (eff. Sept. 1, 2009)

Appendix 15 Acts of 2009, 81st Leg., R.S., ch. 1357, § 2, 2009 Tex. Gen. Laws 4289-91 (S. B. 554) (eff. Sept. 1, 2009)

Appendix 16 Acts of 2011, 82nd Leg., R.S., ch. 68, § 8, 2011 Tex. Gen. Laws 118-24 (S. B. 934) (eff. Sept. 1, 2011)

Appendix 17 Acts of 2011, 82nd Leg., R.S., ch. 91, § 20.003, 2011 Tex. Gen. Laws 448-533 (S. B. 1303) (eff. Sept. 1, 2011)

Appendix 18 Acts of 2011, 82nd Leg., R.S., ch. 223, § 3 2011 Tex. Gen. Laws 799-802 (H. B. 260) (eff. Sept. 1, 2011)

Appendix 19 Acts of 2011, 82nd Leg., R.S., ch. 620, § 10, 2011 Tex. Gen. Laws 1491-96 (S. B. 688) (eff. Sept. 1, 2011)

Appendix 20 Acts of 2011, 82nd Leg., R.S., ch. 1200, §§ 3, 4, 2011 Tex. Gen. Laws 3195-97 (S. B. 158) (eff. Sept. 1, 2011)

Appendix 21 Acts of 2013, 83rd Leg., R.S., ch. 161, § 16.005, 2013 Tex. Gen. Laws 622-710 (S. B. 1093) (eff. Sept. 1, 2013)

Appendix 22 Acts of 2013, 83rd Leg., R.S., ch. 1252, § 21, 2013 Tex. Gen. Laws 3167-72 (H. B. 8) (eff. Sept. 1, 2013)

Appendix 23 Acts of 2015, 84th Leg., R.S., ch. 333, § 16, 2015 Tex. Gen. Laws 1508-17 (H. B. 11) (eff. Sept. 1, 2015)

TABLE OF AUTHORITIES

CASES PAGE

Boykin v. State, 818 S.W.2d 782 (Tex. Crim. App. 1991) ……. 12

Locario v. State, 677 S.W.2d 693 ……. 21
(Tex. App. – Houston [1st Dist.] 1984, no pet.)

McKeithan v. State, 324 S.W.3d 582 (Tex. Crim. App. 2010) ……. 18, 23

Nichols v. State, 653 S.W.2d 768 (Tex. Crim. App. 1981) ……. 11

Nguyen v. State, 359 S.w.3d 636 (Tex. Crim. App. 2012) ……. 12

O'Brien v. State, 544 S.W.3d 376 (Tex. Crim. App. 2018) …… 12, 17

Parker v. State, No. 06-17-00167-CR, 2018 Tex. App. ……. 5, 17
LEXIS 2536 (Tex. App. – Texarkana April 11, 2018, pet. gr.)

State v. Foster, No. 06-13-00190-CR, 2014 WL 2466145 …… 6
(Tex. App. –Texarkana June 2, 2014, pet. ref'd)

Thornton v. State, 425 S.W.3d 289 (Tex. Crim. App. 2014) …… 18

STATUTES

TEX. CODE CRIM. PROC.

Art. 37.09(1) …… 18

TEX. HEALTH & SAFETY CODE

§481.112 …… 20

§481.1285 ……. 16

STATUTES (CONTINUED) PAGE

TEX. HEALTH & SAFETY CODE

§481.129 …… 16

TEX. OCC. CODE

§158.001(a) …….. 8

TEX. PENAL CODE

§15.01 …….... 21

§15.02 …….. 20, 21

§15.02(d) …… 19, 20

§71.02(a) …….. 3, 10, 11, 13, 15, 19

§71.02(a)(1)-(5) ……. 9

§71.02(a)(5) …… 13, 15, 16, 19, 20, 21, 22

§71.02(a)(5-a) …… 15, 16

§71.02(b)…… 10 , 19

§71.02(c) …… 20, 21

§71.023 …… 10

SESSION LAWS PAGE

Act of 1977, 65th Leg., R.S., ch. 346, § 1, 1977 Tex. Gen. Laws 922-24 (S.B. 151) (eff. June 10, 1977) 15

Acts of 1981, 67th Leg., R.S., ch. 587, §§ 1 to 3, 1981 Tex. Gen. Laws 2373-75 (H. B. 21) (eff. Sept. 1, 1981) 14

Acts of 1989, 71st Leg., R.S., ch. 782, § 2, 1989 Tex. Gen. Laws 3468-69 (H. B. 5) (eff. Sept. 1, 1989) 14

Acts of 1991, 72nd Leg., R.S., ch. 555, § 1, 1991 Tex. Gen. Laws 1968-70 (H. B. 549) (eff. Sept. 1, 1991) 14

Acts of 1993, 73rd Leg., R.S., ch. 761, § 3, 1993 Tex. Gen. Laws 2966-70 (H. B. 354) (eff. Sept. 1, 1993) 14

Acts of 1993, 73rd Leg., R.S., ch. 900, § 1.01, 1993 Tex. Gen. Laws 3586-3766 (S. B. 1067) (eff. Sept. 1, 1994) 14

Acts of 1995, 74th Leg., R.S., ch. 318, § 24, 1995 Tex. Gen. Laws 2734-63 (S.B. 15) (eff. Sept. 1, 1995) 14

Acts of 1997, 75th Leg., R.S., ch. 189, § 9, 1997 Tex. Gen. Laws 1045-58 (H. B 1185) (eff. May 21, 1997) 14

Acts of 1999, 76th Leg., R.S., ch. 685, § 8, 1999 Tex. Gen. Laws 3256-58 (H. B. 668) (eff. Sept. 1, 1999) 14

Acts of 2003, 78th Leg., R.S., ch. 641, § 3, 2003 Tex. Gen. Laws 2045-46 (H. B. 2096) (eff. Sept. 1, 2003) 14

Acts of 2005, 79th Leg., R.S., ch. 1162, § 5, 2003 Tex. Gen. Laws 3802-07 (H. B. 3376) (eff. Sept. 1, 2005) 14

PAGE

Acts of 2007, 80th Leg., R.S., ch. 1163, § 2, 2007 Tex. Gen. Laws 3991-92 (H. B. 126) (eff. Sept. 1, 2007) 14

Acts of 2009, 81st Leg., R.S., ch. 153, § 2, 2009 Tex. Gen. Laws 483-86 (S. B. 2225) (eff. Sept. 1, 2009) 14

Acts of 2009, 81st Leg., R.S., ch. 1130, § 1, 2009 Tex. Gen. Laws 3119-33 (H. B. 2086) (eff. Sept. 1, 2009) 14

Acts of 2009, 81st Leg., R.S., ch. 1357, § 2, 2009 Tex. Gen. Laws 4289-91 (S. B. 554) (eff. Sept. 1, 2009) 14

Acts of 2011, 82nd Leg., R.S., ch. 68, § 8, 2011 Tex. Gen. Laws 118-24 (S. B. 934) (eff. Sept. 1, 2011) 14

Acts of 2011, 82nd Leg., R.S., ch. 91, § 20.003, 2011 Tex. Gen. Laws 448-533 (S. B. 1303) (eff. Sept. 1, 2011) 14

Acts of 2011, 82nd Leg., R.S., ch. 223, § 3 2011 Tex. Gen. Laws 799-802 (H. B. 260) (eff. Sept. 1, 2011) 14

Acts of 2011, 82nd Leg., R.S., ch. 620, § 10, 2011 Tex. Gen. Laws 1491-96 (S. B. 688) (eff. Sept. 1, 2011) 14

Acts of 2011, 82nd Leg., R.S., ch. 1200, §§ 3, 4, 2011 Tex. Gen. Laws 3195-97 (S. B. 158) (eff. Sept. 1, 2011) 14, 15, 16

Acts of 2013, 83rd Leg., R.S., ch. 161, § 16.005, 2013 Tex. Gen. Laws 622-710 (S. B. 1093) (eff. Sept. 1, 2013) 14

Acts of 2013, 83rd Leg., R.S., ch. 1252, § 21, 2013 Tex. Gen. Laws 3167-72 (H. B. 8) (eff. Sept. 1, 2013) 14

PAGE

Acts of 2015, 84th Leg., R.S., ch. 333, § 16, 2015 Tex. Gen. Laws 1508-17 (H. B. 11) (eff. Sept. 1, 2015) 14

NO. PD-0474-18

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

ADRIAN PARKER, Appellant

v.

THE STATE OF TEXAS, Appellee

Appeal from 188th District Court of Gregg County
On Review of Cause No. 06-17-00167-CR
In the Court of Appeals of Texas, Sixth Judicial District at Texarkana

****

APPELLANT'S BRIEF ON THE MERITS

****

TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

COMES NOW ADRIAN JEROME PARKER, Appellant, and files his Brief in response to the State's contentions in this review of the decision of the Sixth Court of Appeals at Texarkana.

STATEMENT OF THE CASE

Appellant has nothing material to add or modify the "Statement of the Case" offered by the State.

STATEMENT REGARDING ORAL ARGUMENT

This Court has not granted oral argument.

REPLIES TO GROUNDS FOR REVIEW

REPLY TO FIRST GROUND: The State erroneously tries to invent an offense that the Texas Legislature did not enact.

REPLY TO SECOND GROUND: The State erroneously tries to include a lesser-included offense within a non-existent statute.

STATEMENT OF FACTS

Appellant has nothing material to add or modify the "Statement of Facts" as related by the State, with this exception: that initially in the case at a plea hearing held on December 6, 2016, Appellant denied engaging in organized criminal activity (2 RR 11-12). Later at his open plea he pleaded to the offense (5 RR 9). After he took the witness stand, when he was asked why he pleaded guilty, Appellant stated, "I'm really ready to get it out of the way, get it over with" (5 RR 159). He denied helping anyone "obtain that house to that they could sell drugs out of it" but pleaded guilty, saying, "I'm owning up for my responsibility" (5 RR 160). So the plea of guilty might not have been as unambiguous and direct as stated in the State's recitation.

SUMMARY OF THE ARGUMENT

The Legislature enacted a clear and unambiguous statute that omitted any reference to an offense of "possession with intention to deliver" as predicate offense in TEX. PENAL CODE §71.02(a); the Court should adhere to its precedents for allowing the statute's plain meaning to guide it, where (as here) there is no ambiguity. Since no such offense is found under that section of the Penal Code, there is no need to attempt to find a lesser-included offense.

ARGUMENT AND AUTHORITIES

REPLY TO FIRST GROUND

> The State erroneously tries to invent an offense
> that the Texas Legislature did not enact.

The EOCA Statute does not contain "possession with intent to deliver" as an enumerated offense. Therefore, the State's efforts in effect to invent a new offense are erroneous.

For the convenience of the Court in reviewing the arguments, set out below is the TEX. PENAL CODE §71.02(a), in relevant part with the first five subsections as they originally appeared in the 1977 enactment (*see*, Appendix 1, *post*):

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:
(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, or forgery;
(2) any felony gambling offense;
(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;
(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;
(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;
….

Later Subsection 5-a was added (*see*, Appendix 20, *post*):

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code

The indictment in the case at bar states in relevant part,

"…Defendant, did then and there, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, said combination consisting of the defendant and Ladelsha Price and Christopher Crosby, who collaborated in carrying on the hereinafter described criminal activity, conspire to commit the offense of Possession of a Controlled Substance in an Amount of Four Grams or more but Less that 200 Grams with Intent to Deliver by agreeing with each other that Christopher Crosby would engage in conduct that constituted said offense, and the defendant and Ladelsha Price performed an overt act in pursuance of said

> agreement, to-wit, proving a location for the possession of said controlled substance." (CR 5).

of said agreement, to-wit, proving a location for the possession of said controlled substance." (CR 5).

The Stipulation of Evidence (State's Exhibit #21) tracked the language of the indictment as follows, in relevant part:

> "I ADRIAN JEROME PARKER, did then and there With the intent to establish, maintain, or participate in a combination or in the profits of a combination, said combination consisting of myself, and Ladelsha Price and Christopher Crosby, who collaborated in carrying on the hereinafter described criminal activity, conspire to commit the offense of Possession of a Controlled Substance with Intent to Deliver by agreeing with each other that Christopher Crosby would engage in conduct that constituted said offense, and the myself and Ladelsha Price performed an overt act in pursuance of said agreement, to-wit: proving a location for the possession of said controlled substance." (6 RR 223).

Consequently, both the indictment and the stipulation of evidence recite an offense that is not listed by the statute, namely, the conspiracy to commit the offense of **possession of a controlled substance with the intent to deliver** that controlled substance.

Rightly so, the court of appeals reversed the conviction. *Parker v. State*, No. 06-17-00167-CR, 2018 Tex. App. LEXIS 2536 at *8-9 (Tex. App. – Texarkana April 11, 2018, pet. gr.)(mem. op., not designated for publication). That court applied the reasoning it had used formerly in

State v. Foster, No. 06-13-00190-CR, 2014 WL 2466145, at *1-2 (Tex. App. – Texarkana June 2, 2014, pet. ref'd)(mem. op., not designated for publication). The statute contained no offense as alleged; consequently, the evidence was legally insufficient to prove the offense charged. *Id.* [1]

Let's be clear: the statute lists several different offenses that might serve as a predicate offense.

One begins with these offenses in subsection five:

unlawful ---

manufacture,

delivery,

dispensation,

or distribution

of a controlled substance or dangerous drug,

or unlawful possession of a controlled substance or dangerous drug through

forgery,

fraud,

[1] On direct appeal the State tried to sidestep the deficiency of evidence by arguing that the issue was one concerning the indictment (State's Brief below at p. 5). Appellant did not make that argument.

misrepresentation,

or deception.

Expressed more discursively, the statute criminalizes certain behavior in the context of conspiracy into two distinct categories: the first part of subsection five criminalizes what one might call the "kingpin" activities as those relate to controlled substances: their manufacture, delivery, dispensation, or distribution; that is where the "bulk" amounts might reasonably be found and seized.

The second part of sub-section five of the statute criminalizes possession of controlled substances by dishonest means: forgery, fraud, misrepresentation, deception – all methods/means that one could safely say partake of moral turpitude; the substance of the statute appears directed to those persons who might be entrusted with, or have access to, larger supplies of controlled substances. One might assume that these would be the lures or temptations to which a pharmacist or health practitioner might succumb. Here, the prohibited activities would not seem to reflect so much the conduct of the person on the street -- the "dope peddler" that our parents used to warn us about -- as they are aimed at those who stand in a more direct relationship to quantities of controlled

substances. So while this subpart of the statute may not be aimed at the "kingpin" of a criminal enterprise; still, it is directed at someone who is somewhat removed from the day to day activities of selling small quantities of drugs; that is, it is directed at someone who might be a possessor of larger quantities of illegal narcotics and not a "dope peddler" or end user.

Subsection 5-a puts an express emphasis on what is implicit in the foregoing: making it an offense to cause "the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code." TEX. OCC. CODE §158.001(a), states, in relevant part, "A physician licensed under this subtitle may supply a patient with any drug, remedy, or clinical supply necessary to meet the patient's immediate needs." In other words, a physician is permitted to deliver, dispense, or distribute a controlled substance to her/his patient for that person's "immediate needs" and not come within the prohibitions of the Texas Penal Code or Texas Health & Safety Code. However, anything more risks a penal sanction.

The statute is clear and not ambiguous. There is no "possession with intent to deliver" found in it. Yet the State wants to supply something that the State hypothecates is missing.

The State's reasoning rests on the tacit assumption that the statute is ambiguous. The State tries to resist using that word, that is, "ambiguous" or its noun form, "ambiguity." The State goes to some lengths to distance itself from such a notion. *See*, State's Brief, p. 18, where the State uses as a heading this statement: "This analysis does not go beyond a strict textulist, 'plain language' interpretation." But that is precisely what the State is doing. Throughout pages 13-18 of its Brief, the State tries to infer that somehow possession with intent to deliver was intended to be in the statute, pointing to references to "identical language" in other statutes, the "predominate use of headings," and "inclusion of more rather than fewer, analogous offenses" (State's Brief, p. 18).

There is another way to analyze the "identical language" parallels between TEX. PENAL CODE §71.02(a)(1)-(5) and that is, as discussed above, each of the subsections are concerned with criminalizing the behavior of someone "at the top" – the boss, the kingpin, the head of the crime family. That explains why [to answer the tacit question raised by the State concerning subsection (a)(4) – the prohibited weapons part of the statute – State's Brief at 14] "possession" is not included but is found in Chapter 46 of the Texas Penal Code. Possession is an offense aimed at the

foot soldier, not the boss, who does not need to carry a weapon but surrounds himself with men who do. Think Don Corleone in *The Godfather*. The crimes listed in (a)(1) are included because they are the sorts of offenses where conspiracy may be involved, with harsher consequences under TEX. PENAL CODE §71.02(b). As to the gambling offenses in subsection (2), the statute includes only felony gambling offenses, nothing of lesser degree. Similarly, the offenses in subsection (3) are intended to reach the person behind prostitution, the one who directs the activities. The use of the statutory section headings is nothing more than descriptive; after all, what else would be used to identify the offenses? One would not expect new words or phrases to be coined for offenses as ancient as Cain and Abel.

The State goes far afield in arguing that the Legislature must have been looking at the Texas Controlled Substances Act (Texas Health & Safety Code, Chapter 481) to supply the language for the predicate offenses in subpart (5). Nothing in TEX. PENAL CODE §71.02(a) references the Texas Controlled Substances Act. However, TEX. PENAL CODE §71.023 does reference certain parts of TEX. HEALTH & SAFETY CODE in criminalizing the direction of certain street gang-related activities.

One must conclude that if the Legislature wanted to revise TEX. PENAL CODE §71.02(a) to reference parts of the TEX. HEALTH & SAFETY CODE, the Legislature would have done so.

The State directs the Court to its opinion in *Nichols v. State*, 653 S.W.2d 768, 771 (Tex. Crim. App. 1981) (State's Brief at p. 19), where the Court wrote:

> We think it obvious that the references of Sec. 71.02(a)(5) to "unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception" are necessarily references to those offenses as defined in the Controlled Substances Act and the Dangerous Drugs Act.

Yet one must not be to hasty to equate referring to an act for definitions, on the one hand, with incorporating the schematic of the offenses listed there, on the other. The latter is a step too far; at no time, in the decades during which the statute has existed, has the Legislature revised it to include what the State now seeks to add.

In its marshaling of legislative "context" the State is, in fact, seeking to use interpretive measures that are reserved for the interpreting and understanding of ambiguous statutes.

Quite correctly, the State calls the Court's attention to leading cases on statutory construction, namely, *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991), and the more recent case: *O'Brien v. State*, 544 S.W.3d 376, 384 (Tex. Crim. App. 2018).

In *O'Brien* the Court wrote:

"To determine the collective intent of the Legislature, we look to the statutory text because it provides the best means to determine that intent. If the plain language is clear and unambiguous, our analysis ends because ' " the Legislature must be understood to mean what it expressed, and it is not for the courts to add or subtract from such a statute." ' " [citing to *Nguyen v. State*, 359 S.w.3d 636, 642 (Tex. Crim. App. 2012), which was quoting the language of *Boykin*, 818 S.W.2d at 785].

This Court in *O'Brien* went on to say, "We presume that every word has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible. Only where a statue is ambiguous or would lead to an absurd result do we consider extra-textual source. Ambiguity exists when reasonably well-informed persons may understand the statutory language in two or more different sense." *O'Brian, id*.

In the case at bar the statute brooks no misunderstanding, no ambiguity. It is crystal clear. The Legislature evidently decided to omit "possession with intent to deliver" from the list of predicate offenses. Under the explication of the statute given above, emphasis is on the "kingpin" figure and the person with access to quantities of controlled substances – like a pharmacist, a health care provider, a physician. The "dope peddler" figure on down the chain of supply – the very person who might possess with intent to deliver -- does not come within the ambit of the statute.

TEX. PENAL CODE §71.02(a) has, in more or less the same form, been in the penal statutes of Texas for many years. The statute was placed on the books in 1977, several years before 1981, which the State posits as the crucial year for interpreting the "real" intent to the statute (State's Brief at p. 19). Indeed, the State has placed the enacted statute as Appendix A to its Brief, where one may read the text entitled "Organized Crime": the language of §71.02(a)(5) reads the same then as it reads now. Many legislative sessions have passed into history during which the assembled legislators might have added "possession with intent to deliver" to the predicate offenses; yet that has never happened.

In fact, a perusal of all the amendments that have been made to the act shows no amendment to Subsection (a)(5). The law was amended in the following years with the respective sessions of the Legislature:

Year	Legislative Session	Chapter and Section
1981	67th Legislature	Ch. 587 §1 to 3
1989	71st Legislature	Ch. 782 §2
1991	72nd Legislature	Ch. 555 §1
1993	73rd Legislature	Ch. 761 §3, Ch. 900 §1.01
1995	74th Legislature	Ch. 318, §24
1997	75th Legislature	Ch. 189 §9
1999	76th Legislature	Ch. 685 §8
2003	78th Legislature	Ch. 641 §3
2005	79th Legislature	Chap. 1162 §5
2007	80th Legislature	Chap. 1163 §2
2009	81st Legislature	Ch. 153 §2, Ch. 1130 §1, Ch. 1357 §2
2011	82nd Legislature	Ch. 68 §8, Ch. 91 §20.003, ch. 223 §3 Ch. 620 §10, Ch. 1200 §§3, 4
2013	83rd Legislature	Ch. 161 §16.005, Ch. 1252 §21
2015	84th Legislature	Ch. 333 §16

The texts of each amendment to TEX. PENAL CODE §71.02(a) (including the initial enactment) are attached in the Appendices 1-23, *post*; for the sake of economy, when the act is voluminous, instead of the entire act, the first page of the act is followed by the pages showing the amendment.

To summarize, the Texas Legislature has met every biennium since 1977 when the 65th Legislature first enacted the EOCA, ending with the 85th Legislature in 2017. Excluding the first enactment, that is nineteen (19) sessions over a period of thirty-eight (38) years. TEX. PENAL CODE §71.02(a) was amended twenty-three (23) times, but never was anything ever added or deleted from TEX. PENAL CODE §71.02(a)(5). The closest anything came to an amendment was in 2011 when TEX. PENAL CODE §71.02(a)(5-a) was added. In fact, one could make the argument that when the 82nd Legislature looked at TEX. PENAL CODE §71.02(a)(5), it decided that, instead of adding more wording to that subsection, it elected instead to add TEX. PENAL CODE §71.02(a)(5-a) and let TEX. PENAL CODE §71.02(a)(5) remain as written.

Directing the focus on the amendment that resulted in TEX. PENAL CODE §71.02(a)(5-a), one can see that the Texas Legislature was aware of the relationship between the Texas Controlled Substances Act and EOCA. The text of Acts of 2011, 82nd Leg., R.S., ch. 1200, §§ 3, 4 2011 Tex. Gen. Laws (3195-97)

(S. B. 158) (eff. Sept. 1, 2011) is found, *post*, in Appendix 20. There in Section 3 the Legislature provided the language to TEX. PENAL CODE §71.02(a)(5-a). Just a few lines before that in Section 1 the Legislature added an amendment to Subchapter D, Chapter 481 of the Texas Health and Safety Code by adding TEX. HEALTH & SAFETY CODE §481.1285, criminalizing certain offenses related to controlled substances, namely, concerning a misuse of them owing to the person's access to them "by virtue of the person's profession or employment." Then in Section 2 come amendments to TEX. HEALTH & SAFETY CODE §481.129, criminalizing a patient's "drug shopping" among various physicians by getting several prescriptions for the same controlled substance. One would presume that, if ever there was an occasion to add "possession with the intent to deliver a controlled substance" to TEX. PENAL CODE §71.02(a)(5) that would have been the time. After all, who more likely to conspire with the intent to possess with intent to deliver a controlled substance than a corrupt physician or health provider and a patient or patients? However, TEX. PENAL CODE §71.02(a)(5) was not amended. The two provisions are there in the session law, side by side, yet the Legislature made no attempt to "correct" what the State wants to argue was an oversight or an implied intention.

Surely, if the Legislature wanted to "correct" the long-time omission for which the State now argues, that deliberative body could have done so.

As Alcala, J., stated succinctly in her concurring opinion in *O'Brien*: "…the plain language of the statute adequately resolves the instant appeal without consideration of extra-textual matters." *O'Brien* at 395. The State erroneously tries to invent an offense that was never within the statute, and no amount of second-guessing will supply such an offense. That ground of review should be denied. The judgment of the court of appeals should be affirmed.

REPLY TO SECOND GROUND

The State erroneously tries to include a lesser-included offense within a non-existent statute.

The State contends that there is a "necessarily subsumed offense" to which Appellant pleaded guilty (State's Brief at p. 22). The court of appeals looked at this question and stated as follows: "…to be a lesser-included offense requires that a greater-inclusive offense has been charged. In this case, Count I of the indictment failed to charge an offense. Consequently, since no greater-inclusive offense has been charged, there can be no lesser-included offense." *Parker*, at *9, note 8. In making that assessment, the

court of appeals referred both to the definition of a lesser-included offense found in Art. 37.09(1), TEX. CODE CRIM. PROC., and cited to the analysis found in *Thornton v. State*, 425 S.W.3d 289, 299-300 (Tex. Crim. App. 2014), concluding there was no lesser-included offense under that rubric.

McKeithan v. State, 324 S.W.3d 582, 587 (Tex. Crim. App. 2010) has this to say about what constitutes a lesser-included offense:

> An offense is a lesser-included offense of another offense under Art. 37.09(1)…if the indictment for the greater-inclusive offense either (1) alleges all of the elements of the lesser-included offense or (2) alleges elements plus facts (including descriptive averments, such as non-statutory manner and means, that are alleged for purposes of notice) from which all of the elements of the lesser-included offense may be deduced. Both statutory elements and any descriptive averments alleged in the indictment for the greater-inclusive offense should be compared to the statutory elements of the lesser-included offense.

Here is the wording of the indictment, in relevant part:

> "…Defendant, did then and there, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, said combination consisting of the defendant and Ladelsha Price and Christopher Crosby, who collaborated in carrying on the hereinafter described criminal activity, conspire to commit the offense of Possession of a Controlled Substance in an Amount of Four Grams or more but Less that 200 Grams with Intent to Deliver by agreeing with each other that Christopher Crosby would engage in conduct that constituted said offense, and the defendant and Ladelsha Price performed an overt act in pursuance of said agreement, to-wit, proving a location for the possession of said controlled substance." (CR 5).

The State wants to put forward "conspiracy" as the lesser-included offense of the EOCA allegation (State's Brief at p. 25). But conspiracy to do what? The State wants to argue that there is a lesser-included offense of conspiracy **to possess a controlled substance with the intent to deliver**. Yet, as is clear from the arguments under the first ground of review, *supra*, that very element is not a part of TEX. PENAL CODE §71.02(a). If it is not a predicate offense in the statute, it is logical to conclude that it cannot supply a lesser-included offense.

The State cites to TEX. PENAL CODE §15.02(d), which places conspiracy to commit an offense into one punishment class lower than the object offense (State's Brief at 25). However, the statute under consideration – the statutory elements of TEX. PENAL CODE §71.02(a)(5) – is in itself a crime of conspiracy whose conviction brings not a lesser punishment but a greater one under TEX. PENAL CODE §71.02(b). There is no need to reach out to a statute used to apply conspiracy to non-conspiracy offenses. TEX. PENAL CODE §71.02(a)(5) already contains the element of conspiracy but does not contain the element of possession with intent to deliver. The State is attempting to gather an amalgam of sections of the Texas Penal Code in an attempt to create an offense that simply does

not exist. Stated another way, TEX. PENAL CODE §71.02(a)(5) pre-empts the use of TEX. PENAL CODE §15.02(d) since conspiracy is an element.

Apparently, the State's argument is that, because there is an offense of possession of a controlled substance with the intent to deliver found in TEX. HEALTH & SAFETY CODE §481.112, there can therefore be a conspiracy to commit that offense. The State argues that "the State could have abandoned the EOCA-specific language in Count I and been left with an allegation of conspiracy to possess a controlled substance with the intent to deliver…." Yet the State did not do so; one cannot speculate on what the state might have done. It is outside the record – an unknown. The State chose to indict under EOCA, not under the conspiracy statute. They are distinct laws.

In fact, the EOCA contains its own conspiracy section. TEX. PENAL CODE §71.02(c) states, in relevant part: "Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit." That would short-circuit the attempt by the State to graft TEX. PENAL CODE §15.02 onto TEX. PENAL CODE §71.02(a)(5) (State's Brief at pp. 25-26). The State argues that

the "conspiracy offense is necessarily subsumed…" However, that cannot be so if TEX. PENAL CODE §71.02(c) has any meaning.

It has been held that TEX. PENAL CODE §15.01 and §15.02 do not apply in the context of EOCA. *See, Locario v. State*, 677 S.W.2d 693, 701 (Tex. App. – Houston [1st Dist.] 1984, no pet.). There the defendant had argued that he should have been prosecuted under the conspiracy statute rather than the EOCA statute. The court of appeals rejected that argument, because the EOCA statute was premised on the combination of people to constitute an offense, something that the conspiracy statutes did not require. The court of appeals also held that in this instance the general statute controlled because the EOCA was enacted after the conspiracy statute; therefore, the Legislature intended the latter, general, statute to prevail. *Id.*

One comes back to the reality that the offense of "possession with intent to deliver a controlled substance" is not found in PENAL CODE §71.02(a)(5).

One might use a rather homely illustration to make the point:

Interstate highway 35 runs from Austin to Dallas. To drive there, part of the same highway also runs from Austin to Salado, where you can stop in

at the restaurant at the Stagecoach Inn for a delicious four course meal. One could say that the greater inclusive route of I-35 is Austin to Dallas, and the lesser-included route is Austin to Salado. However, you can't get to the Stagecoach Inn by getting in your pickup in Austin and heading out I-35 toward New Braunfels and points south. You simply cannot get there that way. That road will not take you to Salado; the lesser-included route is not there. You might still be on I-35, but for all your efforts you are not going to arrive in Salado. You'll eventually reach the Rio Grande and look over to Nuevo Laredo, but Salado and the restaurant at the Stagecoach Inn will not be there.

Similarly with TEX. PENAL CODE §71.02(a)(5). By leaving out the EOCA combination and conspiracy parts, there may be lesser-included offenses such as unlawful delivery of a controlled substance, or unlawful possession of a controlled substance, because those are a part of the greater inclusive offenses of combination/conspiracy to commit those crimes. However, the greater inclusive offense of conspiracy to possess with intent to deliver a controlled substance is not in the statute, so by leaving out the EOCA-specific language one still cannot get to a lesser included offense. It does not appear in the statute.

In its Brief (at p. 23) the State concedes that the "court of appeals was right that a true failure to charge an offense (or something of that magnitude) would render reformation impossible."

Under the holding in *McKeithan*, there can be no lesser-included offense, because the greater-inclusive offense does not contain the requisite elements. In the case at bar there is, in fact, a true failure to charge an offense.

The judgment of the court of appeals is not susceptible to reformation, because there is no lesser-included offense to be found.

The second ground of review should be denied. The judgment of the court of appeals should be affirmed.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Adrian Jerome Parker, Appellant, prays that this Honorable Court of Criminal Appeals, upon reviewing the record, the authorities, and the arguments of counsel, will deny the grounds for relief advanced by the State, will affirm the judgment of the court of appeals, and grant the relief to which Appellant is entitled.

Respectfully submitted,

/S/ Hough-Lewis Dunn
HOUGH-LEWIS ("LEW") DUNN
TEXAS STATE BAR NO. 02644600
201 E. METHVIN STREET, SUITE 102
P.O. BOX 2226
LONGVIEW, TX 75606
903-757-6711
903-757-6712
dunn@texramp.net
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I certify the foregoing *APPELLANT'S BRIEF ON THE MERITS* was served upon the State of Texas by sending a true and correct copy to the Criminal District Attorney of Gregg County via electronic filing to Hon. John J. Roberts, Assistant Criminal District Attorney for Gregg County, 101 E. Methvin St. Suite 333, Longview, TX 75601, and by sending a true and correct copy via electronic filing to the State Prosecuting Attorney Hon. Stacey M. Soule, State Prosecuting Attorney, P.O. Box 13046, Austin, TX 78711-3046 on the 6th day of August, 2018.

/S/ Hough-Lewis Dunn

CERTIFICATE OF COMPLIANCE

This petition complies with the typeface requirements of TEX. R. APP. P. 9.4(e), because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document complies with the word-count limitations of TEX. R. APP. P. 9.4(i) because it contains 4,669 words, excluding the parts exempted by TEX. R. APP. P. 9.4(i)(1).

/S/ Hough-Lewis Dunn

APPENDICES

APPENDIX 1

Acts of 1977, 65th Leg., R.S., ch. 346, § 1, 1977 Tex. Gen. Laws 922-24

(S.B. 151) (eff. June 10, 1977)

ORGANIZED CRIMINAL ACTIVITY

CHAPTER 346

S. B. No. 151

An Act relating to a definition of "combination" and "conspires to commit" in relation to organized crime and to the offense of engaging in organized criminal activity; creating certain offenses; providing penalties and venue for prosecution; providing testimonial immunity; excluding certain defenses; providing a defense by renunciation; amending the Penal Code to add Title 11, Organized Crime; adding Article 13.21 to the Code of Criminal Procedure, 1965, as amended; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. The Penal Code is amended by adding[30] Title 11 to read as follows:

TITLE 11. ORGANIZED CRIME

CHAPTER 71. ORGANIZED CRIME

"Sec. 71.01. Definitions

"In this chapter, (a) 'combination' means five or more persons who collaborate in carrying on criminal activities, although:

"(1) participants may not know each other's identity;

"(2) membership in the combination may change from time to time; and

"(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

"(b) 'Conspires to commit' means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

"Sec. 71.02. Engaging in Organized Criminal Activity

"(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more of the following:

"(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, or forgery;

"(2) any felony gambling offense;

"(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

"(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons; or

"(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception.

30. V.T.C.A. Penal Code, §§ 71.01 to 71.05.

"(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (5) of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

"(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (5) of Subsection (a) of this section that the person conspired to commit.

"Sec. 71.03. Defenses Excluded

"It is no defense to prosecution under Section 71.02 of this code that:

"(1) one or more members of the combination are not criminally responsible for the object offense;

"(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

"(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02 of this code; or

"(4) once the initial combination of five or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in the combination and are involved in a continuing course of conduct constituting an offense under this chapter.

"Sec. 71.04. Testimonial Immunity

"(a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

"(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

"Sec. 71.05. Renunciation Defense

"(a) It is an affirmative defense to prosecution under Section 71.02 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in Subdivisions (1) through (5) of Subsection (a) of Section 71.02 of this code and took further affirmative action that prevented the commission of the offense.

"(b) Renunciation is not voluntary if it is motivated in whole or in part:

"(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

"(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

"(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (5) of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through

(5) of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code."

Sec. 2. Chapter 13, Code of Criminal Procedure, 1965, as amended, is amended by adding [31] Article 13.21 to read as follows:

"Art. 13.21. **Organized criminal activity**

"The offense of engaging in organized criminal activity may be prosecuted in any county in which any act is committed to effect an objective of the combination."

Sec. 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the senate on May 12, 1977: Yeas 26, Nays 2; May 13, 1977, senate reconsidered the vote by which finally passed; May 13, 1977, again finally passed: Yeas 24, Nays 3; May 24, 1977, senate refused to concur in house amendments and requested appointment of Conference Committee; May 25, 1977, house granted request of the senate; May 27, 1977, senate adopted Conference Report: Yeas 25, Nays 4; passed the house, with amendments, on May 24, 1977: Yeas 128, Nays 4, one present not voting; May 25, 1977, house granted request of the senate for appointment of Conference Committee; May 27, 1977, house adopted Conference Report: Yeas 123, Nays 20, two present not voting.

Approved June 10, 1977.

Effective June 10, 1977.

31. Vernon's Ann.C.C.P. art. 13.21.

APPENDIX 2

Acts of 1981, 67th Leg., R.S., ch. 587, §§ 1 to 3, 1981 Tex. Gen. Laws 2373-75

(H. B. 21) (eff. Sept. 1, 1981)

TEXAS DEPARTMENT OF CORRECTIONS—EMPLOYEES—SURVIVORS—PAYMENTS

CHAPTER 586

S. B. No. 1272

An Act relating to the authority of the Texas Department of Corrections to make payments to certain survivors of employees.

Be it enacted by the Legislature of the State of Texas:

Section 1. From funds currently appropriated for the payment of salaries, the Texas Department of Corrections may pay any unused holiday leave time or compensatory time to the survivors of any employees killed in the course of duty during the time period beginning January 1, 1981, and ending April 30, 1981.

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 27, 1981: Yeas 31, Nays 0; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas; passed the House on May 30, 1981: Yeas 139, Nays 0, one present not voting; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas.

Approved June 15, 1981.

Effective June 15, 1981.

OBSCENITY—ORGANIZED CRIMINAL ACTIVITY—WHOLESALE PROMOTION OR SEXUAL PERFORMANCE BY CHILD

CHAPTER 587

H. B. No. 21

An Act relating to the offense of organized criminal activity with respect to obscenity; providing penalties.

Be it enacted by the Legislature of the State of Texas:

Section 1. Section 71.02(a), Penal Code, is amended [22] to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, or forgery;

22. V.T.C.A. Penal Code, § 71.02(a).

(2) any felony gambling offense;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same; or

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance.

Sec. 2. Section 71.02(b), Penal Code, is amended[23] to read as follows:

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (7) of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

Sec. 3. Section 71.02(c), Penal Code, is amended[24] to read as follows:

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (7) of Subsection (a) of this section that the person conspired to commit.

Sec. 4. Section 71.05(a), Penal Code, is amended[25] to read as follows:

(a) It is an affirmative defense to prosecution under Section 71.02 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code and took further affirmative action that prevented the commission of the offense.

Sec. 5. Section 71.05(c), Penal Code, is amended[26] to read as follows:

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.

Sec. 6.[27] This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence when the offense was committed, and Section 71.02, Penal Code, as in existence before the

23. V.T.C.A. Penal Code, § 71.02(b).
24. V.T.C.A. Penal Code, § 71.02(c).
25. V.T.C.A. Penal Code, § 71.05(a).
26. V.T.C.A. Penal Code, § 71.05(c).
27. V.T.C.A. Penal Code, § 71.02 note.

effective date of this Act, is continued in force for this purpose as if this Act were not in force. For the purpose of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

Sec. 7. This Act takes effect September 1, 1981.

Sec. 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 27, 1981, by a non-record vote; passed by the Senate on May 31, 1981, by the following vote: Yeas 30, Nays 0.

Approved June 15, 1981.

Effective Sept. 1, 1981.

LANDLORD AND TENANT—LEASE TERMINATION—PUBLIC INDECENCY CONVICTION

CHAPTER 588

H. B. No. 22

An Act relating to voiding of a lease by a landlord where a tenant or occupant of the leased property or employee or agent of the tenant or occupant uses the leased property to violate the provisions of Chapter 43 of the Penal Code, relating to public indecency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Title 84, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding [28] Article 5236g to read as follows:

Art. 5236g. Termination of lease by landlord

Notwithstanding any of the terms or provisions of a lease, a landlord may terminate either written or oral lease entered into or renewed after the effective date of this Act if the tenant or occupant uses said property for any activity for which he or his employee or agent is convicted under any provision of Chapter 43 of the Penal Code. Within 6 months after the option to terminate the lease arises and 10 days after the fee owner or any intermediate lessor gives notice in writing to the tenant or occupant that he is exercising his option to terminate the lease, the right of possession to the property reverts to the person exercising the option. This option does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupant or his employee.

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby

28. Vernon's Ann.Civ.St. art. 5236g.

APPENDIX 3

Acts of 1989, 71st Leg., R.S., ch. 782, § 2, 1989 Tex. Gen. Laws 3468-69

(H. B. 5) (eff. Sept. 1, 1989)

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 28, 1989, by a viva-voce vote; and that the Senate concurred in House amendment on May 22, 1989, by the following vote: Yeas 31, Nays 0; passed the House, with amendment, on May 11, 1989, by the following vote: Yeas 133, Nays 0.

Approved June 15, 1989.

Effective Sept. 1, 1989.

CHAPTER 782

H.B. No. 5

AN ACT

relating to the offense of engaging in organized criminal activity.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 71.01, Penal Code, is amended to read as follows:

Sec. 71.01. DEFINITIONS. In this chapter,

(a) *"Combination"* [~~"combination"~~] means *three* [~~five~~] or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

(c) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02 of this code.

SECTION 2. Section 71.02, Penal Code, is amended to read as follows:

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, or forgery;

(2) any felony gambling offense;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same; [~~or~~]

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance; *or*

(8) any felony offense under Chapter 32, Penal Code.

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through *(8)* [~~(7)~~] of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through *(8)* [~~(7)~~] of Subsection (a) of this section that the person conspired to commit.

SECTION 3. The change in law made by Sections 1 and 2 of this Act applies only to acts or omissions occurring on or after the effective date of this Act.

SECTION 4. This Act takes effect September 1, 1989.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 3, 1989, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 5 on May 27, 1989, by a non-record vote; passed by the Senate, with amendments, on May 26, 1989, by a viva-voce vote.

Approved June 15, 1989.

Effective Sept. 1, 1989.

CHAPTER 783

H.B. No. 366

AN ACT

relating to the regulation of certain electronic communications by solicitors; providing a criminal penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.47 to read as follows:

Sec. 35.47. CERTAIN ELECTRONIC COMMUNICATIONS MADE FOR PURPOSE OF SALES. (a) A person may not make a telephone call or use an automatic dial announcing device to make a telephone call for the purpose of making a sale if:

(1) the person making the call or using the device knows or should have known that the called number is a mobile telephone for which the called person will be charged for that specific call; and

(2) the called person has not given consent to make such a call to the person calling or using the device or to the business enterprise for which the person is calling or using the device.

(b) A person may not make or cause to be made a transmission for the purpose of a solicitation or sale to a facsimile recording device or other telecopier for which the person or entity receiving the transmission will be charged for the transmission, unless the person or entity receiving the transmission has given, prior to the transmission, consent to make or cause to be made the transmission.

(c) On complaint of a called person that Subsection (a) or (b) of this section has been violated, the county or district attorney of the county in which the person resides shall investigate the complaint and file charges if appropriate. A telephone company

APPENDIX 4

Acts of 1991, 72nd Leg., R.S., ch. 555, § 1, 1991 Tex. Gen. Laws 1968-70

(H. B. 549) (eff. Sept. 1, 1991)

(a) A person commits an offense if, with a firearm, or explosive weapon, or illegal knife, he intentionally, knowingly, or recklessly goes:

(1) on the premises of a school or an educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution;

(2) on the premises of a polling place on the day of an election or while *early voting* [~~absentee balloting~~] is in progress;

(3) in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court; or

(4) on the premises of a racetrack.

SECTION 51. This Act is intended only to change the terminology involving "absentee voting" to appropriate terminology using "early voting." The reenactment of text in this Act to effect this change in terminology does not prevail over a conflicting change in law made by another Act of the 72nd Legislature, Regular Session, 1991, and that conflicting change is given effect with the change in terminology made by this Act.

SECTION 52. This Act takes effect September 1, 1991.

SECTION 53. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 4, 1991: Yeas 31, Nays 0; passed the House on May 24, 1991, by a non-record vote.

Filed without signature June 16, 1991.

Effective September 1, 1991.

CHAPTER 555

H.B. No. 549

AN ACT

relating to the punishment of persons convicted of certain offenses committed for the benefit of, at the direction of, or in association with a criminal street gang.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 71.01 and 71.02, Penal Code, are amended to read as follows:

Sec. 71.01. DEFINITIONS. In this chapter,

(a) "Combination" means three or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

(c) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02 of this code.

(d) "Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination *or as a member of a criminal street gang*, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, *aggravated sexual assault, sexual assault*, or forgery;

(2) any felony gambling offense;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance; [~~or~~]

(8) any felony offense under Chapter 32, Penal Code*; or*

(9) any offense under Chapter 36, Penal Code.

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through *(9)* [~~(8)~~] of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through *(9)* [~~(8)~~] of Subsection (a) of this section that the person conspired to commit.

SECTION 2. (a) The title heading to Title 11, Penal Code, is amended to read as follows:

TITLE 11. ORGANIZED CRIME *AND CRIMINAL STREET GANGS*

(b) The chapter heading to Chapter 71, Penal Code, is amended to read as follows:

CHAPTER 71. ORGANIZED CRIME *AND CRIMINAL STREET GANGS*

SECTION 3. Section 12, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

Sec. 12. DETENTION AS A CONDITION OF PROBATION. When the court having jurisdiction of a misdemeanor case grants probation to the defendant, the court may require as a condition of probation that the defendant submit to a period of detention in a county jail or community corrections facility to serve a term of imprisonment not to exceed 30 days *and serve up to 100 hours of community service.* In a felony case the court may require as a condition of probation that the defendant submit to a period of detention in a county jail to serve a term of imprisonment not to exceed 180 days. *A court granting probation to a defendant convicted of an offense under Section 71.02, Penal Code, may require as a condition of probation that the defendant submit to 180 days detention in the county jail or community corrections facility and serve up to 200 hours of public service in addition to any other penalty prescribed by law.*

SECTION 4. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this

section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 5. This Act takes effect September 1, 1991.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 2, 1991, by a non-record vote; the House refused to concur in Senate amendments to H.B. No. 549 on May 26, 1991, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 549 on May 27, 1991, by a non-record vote; passed by the Senate, with amendments, on May 25, 1991, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 549 on May 27, 1991, by a viva-voce vote.

Filed without signature June 16, 1991.

Effective September 1, 1991.

CHAPTER 556

H.B. No. 595

AN ACT

relating to the impoundment of certain motor vehicles on failure to furnish evidence of financial responsibility after an accident.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article III, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended by adding Section 4A to read as follows:

Sec. 4A. IMPOUNDMENT OF VEHICLE FOR FAILURE TO FURNISH EVIDENCE. (a) A person who is the owner or operator of a motor vehicle that is not registered in this state and that is involved in a motor vehicle accident in this state that results in injury to or death of any person, or damage to property of any one person to an apparent extent of $500 or more, shall furnish evidence of financial responsibility to a law enforcement officer of the state or a political subdivision of the state who is conducting an investigation of the accident.

(b) On failure to furnish evidence of financial responsibility to a law enforcement officer, the person shall be taken as soon as practicable before a magistrate.

(c) The magistrate shall conduct an inquiry on the issues of negligence and liability for any death, injury, or property damage sustained in the accident.

(d) If the magistrate determines that there is a reasonable possibility of a judgment being rendered against the person for any death, injury, or property damage sustained in the accident, the magistrate shall order the person to furnish evidence of financial responsibility for the death, injury, or property damage, or evidence that the person is exempt from the requirement of Section 1A(a) of this Act.

(e) On failure of the person to furnish evidence satisfactory to the magistrate of financial responsibility or of exemption from the requirement of Section 1A(a) of this Act, the magistrate shall enter an order directing the sheriff of the county or the chief of police of the municipality to impound the vehicle owned or operated by the person that was involved in the motor vehicle accident.

APPENDIX 5

Acts of 1993, 73rd Leg., R.S., ch. 761, § 3, 1993 Tex. Gen. Laws (2966-70)

(H. B. 354) (eff. Sept. 1, 1993)

~~court at law with jurisdiction, with the county~~] clerk *authorized to handle filings for that court or courts.*

(c) A party initiating a condemnation proceeding in a county in which there is not a county court at law [~~with jurisdiction~~] must file the condemnation petition with the [~~district judge or, if there is more than one district court in the county, with the~~] district clerk. *The filing fee shall be due at the time of filing in accordance with Section 51.317, Government Code.*

(d) District and county clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk serves.

SECTION 2. The changes in law made by this Act apply only to a condemnation proceeding for which the petition is filed on or after the effective date of this Act. A condemnation proceeding for which the petition was filed before that date is governed by the law as it existed on the date of filing, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 1, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 198 on May 24, 1993, by a non-record vote; passed by the Senate, with amendments, on May 14, 1993: Yeas 29, Nays 0.

Approved June 18, 1993.

Effective Sept. 1, 1993.

CHAPTER 761

H.B. No. 354

AN ACT

relating to the reporting of certain financial transactions, to the creation of offenses relating to certain financial transactions, and to the creation of the attorney general law enforcement account; making an appropriation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The legislature finds that the banking industry and other financial institutions may be strong allies in the fight against money laundering and that filing certain financial transaction reports required by law does not in itself imply knowledge of an illegal money laundering activity.

SECTION 2. Title 7, Penal Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. MONEY LAUNDERING

Sec. 34.01. DEFINITIONS. In this chapter:

(1) "Criminal activity" means any offense, including any preparatory offense, that is:

(A) classified as a felony under the laws of this state or the United States; or

(B) punishable by confinement for more than one year under the laws of another state.

(2) "Funds" includes:

(A) coin or paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issue;

(B) United States silver certificates, United States Treasury notes, and Federal Reserve System notes; and

(C) official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country and foreign bank drafts.

(3) "Peace officer" means a person who is elected, appointed, or employed by a governmental entity and who is a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

(4) "Proceeds" means funds acquired or derived directly or indirectly from, produced through, or realized through an act.

Sec. 34.02. MONEY LAUNDERING. (a) A person commits an offense if the person knowingly:

(1) acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports the proceeds of criminal activity;

(2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or

(3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity.

(b) For purposes of Subsection (a)(3) of this section, a person is presumed to believe that funds are the proceeds of criminal activity if a peace officer or a person acting at the direction of a peace officer represents to the person that the funds are proceeds of criminal activity, regardless of whether the peace officer or person acting at the peace officer's direction discloses the person's status as a peace officer or that the person is acting at the direction of a peace officer.

(c) It is a defense to prosecution under this section that the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose pursuant to the laws of this state or the United States.

(d) It is a defense to prosecution under this section that the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution and by Article 1, Section 10, of the Texas Constitution or that the funds were received as bona fide legal fees by a licensed attorney and at the time of their receipt, the attorney did not have actual knowledge that the funds were derived from criminal activity.

(e) An offense under this section is:

(1) a felony of the third degree if the value of the funds is $3,000 or more but less than $20,000;

(2) a felony of the second degree if the value of the funds is $20,000 or more but less than $100,000; or

(3) a felony of the first degree if the value of the funds is $100,000 or more.

Sec. 34.03. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist in the prosecution of an offense under this chapter.

SECTION 3. Section 71.02, Penal Code, is amended to read as follows:

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, or forgery;

(2) any felony gambling offense;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance;

(8) any felony offense under Chapter 32, Penal Code; [~~or~~]

(9) any offense under Chapter 36, Penal Code; *or*

(10) any offense under Chapter 34, Penal Code.

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through *(10)* [~~(9)~~] of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through *(10)* [~~(9)~~] of Subsection (a) of this section that the person conspired to commit.

SECTION 4. Sections 71.05(a) and (c), Penal Code, are amended to read as follows:

(a) It is an affirmative defense to prosecution under Section 71.02 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) *or Subdivision (10)* of Subsection (a) of Section 71.02 of this code and took further affirmative action that prevented the commission of the offense.

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) *or Subdivision (10)* of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (7) *or Subdivision (10)* of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.

SECTION 5. Subdivision (2), Article 59.01, Code of Criminal Procedure, is amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Chapters 29, 30, 31, or 32, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code; [~~or~~]

(iii) a felony under Article 350, Revised Statutes;

(iv) any felony under Chapter 34, Penal Code; or

(v) any felony under The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes);

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision.

SECTION 6. Title 16, Revised Statutes, is amended by adding Article 351 to read as follows:

Art. 351. FINANCIAL TRANSACTION REPORTING REQUIREMENTS

Sec. 1. CURRENCY AND FOREIGN TRANSACTIONS—CRIMINAL REFERRAL FORM REPORTING REQUIREMENTS. (a) Except as provided by Subsection (b) of this section, a financial institution in this state that is required to file a report under the Currency and Foreign Transactions Reporting Act (31 U.S.C. Section 5311 et seq.), 31 C.F.R. Part 103, or 12 C.F.R. Section 21.11, and their subsequent amendments, shall file a duplicate copy of the report with the attorney general.

(b) A financial institution that timely files a report required by this section with the appropriate federal agency as required by federal law is considered to be in compliance with this section unless the attorney general:

(1) notifies the financial institution that the required report is not one that is regularly and comprehensively transmitted by the federal agency to the attorney general following the attorney general's request to that agency;

(2) requests that the financial institution provide the attorney general with a duplicate copy of the report; and

(3) reimburses the financial institution the actual cost of duplicating and delivering the report or 25 cents per page, whichever is less.

(c) In this section, "financial institution" has the meaning assigned by 31 U.S.C. Section 5312 and its subsequent amendments.

Sec. 2. CASH RECEIPTS OF MORE THAN $10,000 REPORTING REQUIREMENT. (a) Except as provided by Subsection (b) of this section, a person engaged in a trade or business who, in the course of the trade or business, receives more than $10,000 in one transaction or in two or more related transactions and who is required to file a return under Section 6050I, Internal Revenue Code of 1986 (26 U.S.C. Section 6050I), or 26 C.F.R. Section 1.6050I, and their subsequent amendments, shall file a duplicate copy of the return with the attorney general.

(b) A person who timely files a return required by this section with the appropriate federal agency as required by federal law is considered to be in compliance with this section unless the attorney general:

(1) notifies the person that the required return is not one that is regularly and comprehensively transmitted by the federal agency to the attorney general; and

(2) requests that the person provide the attorney general with a duplicate copy of the return.

Sec. 3. USE OF REPORTED INFORMATION. The attorney general may report any possible violation indicated by analysis of a report or return required by this article or information obtained under this article to an appropriate law enforcement agency for use in the proper discharge of the agency's official duties.

Sec. 4. FAILURE TO COMPLY WITH REPORTING REQUIREMENTS; CRIMINAL OFFENSE; PENALTY. (a) A person commits an offense if the person:

(1) is requested by the attorney general to submit information required by Section 1 or 2 of this article to the attorney general; and

(2) knowingly fails to provide the requested information to the attorney general before the 30th day after the date of the request.

(b) An offense under this section is a Class A misdemeanor.

Sec. 5. SUPPRESSION OF PHYSICAL EVIDENCE; CRIMINAL OFFENSE; PENALTY. (a) A person commits an offense if the person knowingly suppresses physical evidence connected with information contained in a report or return required by this article through concealment, alteration, or destruction.

(b) An offense under this section is a Class A misdemeanor.

Sec. 6. NOTIFICATION TO TARGET OF CRIMINAL INVESTIGATION; CRIMINAL OFFENSE; PENALTY. (a) A person commits an offense if the person:

(1) is required to submit a report or return under this article; and

(2) knowingly notifies an individual who is the target of criminal investigation involving an offense under Chapter 34, Penal Code, that:

(A) the attorney general has requested the person to provide information required by this article related to the targeted individual; or

(B) the individual may be subject to impending criminal prosecution.

(b) An offense under this section is a Class A misdemeanor.

SECTION 7. Section 402.005, Government Code, is amended to read as follows:

Sec. 402.005. ACCEPTANCE OF *GIFTS, GRANTS, AND FORFEITED ASSETS; CREATION OF SPECIAL ACCOUNT* [~~MONEY~~]. *(a)* The attorney general may not accept or use money offered by an individual, firm, partnership, corporation, or association for investigating or prosecuting a matter.

(b) The attorney general law enforcement account is created as a dedicated account in the general revenue fund in the state treasury. The account shall consist of law enforcement-related gifts and grants, and forfeited assets, and shall be administered by the attorney general.

(c) The attorney general may accept gifts and grants on behalf of the state for purposes related to law enforcement duties performed by the attorney general, unless the acceptance is prohibited under Subsection (a) or other law. Money received under this subsection shall be deposited in the law enforcement account established pursuant to Subsection (b) and may be appropriated only for the purpose for which the money was given.

SECTION 8. All moneys deposited to the credit of the attorney general law enforcement account, and all interest accruing from the deposit of that money, are appropriated to the Office of the Attorney General for the fiscal biennium ending August 31, 1995, for the purposes provided by Section 402.005, Government Code, as amended by this Act.

SECTION 9. This Act takes effect September 1, 1993.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 23, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 354 on May 26, 1993, by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas; passed by the Senate, with amendments, on May 22, 1993: Yeas 31, Nays 0; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Approved June 18, 1993.

Effective Sept. 1, 1993.

CHAPTER 762

H.B. No. 680

AN ACT

relating to the application of the professional prosecutors law to certain prosecutors.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 46.002, Government Code, is amended to read as follows:

Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter applies only to the following prosecutors:

APPENDIX 6

Acts of 1993, 73rd Leg., R.S., ch. 900, § 1.01, 1993 Tex. Gen. Laws (3586-3766)

(S. B. 1067) (eff. Sept. 1, 1994)

SECTION 5.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 22, 1993, by the following vote: Yeas 29, Nays 0; May 27, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 1993, House granted request of the Senate; May 30, 1993, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 1; passed the House, with amendments, on May 25, 1993, by a non-record vote; May 28, 1993, House granted request of the Senate for appointment of Conference Committee; May 30, 1993, House adopted Conference Committee Report by the following vote: Yeas 78, Nays 59, two present not voting.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment, except Sections 4.07 and 4.08, effective Sept. 1, 1993, and the remainder of Article 4, effective Oct. 1, 1993.

CHAPTER 900

S.B. No. 1067

AN ACT

relating to the sentencing policy of the state and to offenses and punishments under the Penal Code, to offenses and punishments involving certain prohibited or dangerous substances, to the effect of certain convictions and acquittals, and to the civil consequences of certain offenses involving intoxication; providing conforming amendments.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1

SECTION 1.01. The Penal Code is amended to read as follows:

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This code shall be known and may be cited as the Penal Code.

Sec. 1.02. OBJECTIVES OF CODE. The general purposes of this code are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, to achieve the following objectives:

(1) to insure the public safety through:

(A) the deterrent influence of the penalties hereinafter provided;

(B) the rehabilitation of those convicted of violations of this code; and

(C) such punishment as may be necessary to prevent likely recurrence of criminal behavior;

(2) by definition and grading of offenses to give fair warning of what is prohibited and of the consequences of violation;

(3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of differences in rehabilitation possibilities among individual offenders;

(4) to safeguard conduct that is without guilt from condemnation as criminal;

(2) "Offense of operating an aircraft while intoxicated" means:

(A) an offense under Section 49.05;

(B) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994; or

(C) an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

(A) an offense under Section 49.06;

(B) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994; or

(C) an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

(d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.05, or 49.06 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

(e) A conviction may not be used for purposes of enhancement under this section if:

(1) the conviction was a final conviction under Subsection (e) and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; and

(2) the person has not been convicted of an offense under Section 49.04, 49.05, or 49.06 or any offense related to driving or operating a motor vehicle while intoxicated committed within 10 years before the date on which the offense for which the person is being tried was committed.

Sec. 49.10. NO DEFENSE. In a prosecution under Section 49.03, 49.04, 49.05, 49.06, 49.07, or 49.08, the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.

TITLE 11. ORGANIZED CRIME [~~AND CRIMINAL STREET GANGS~~]

CHAPTER 71. ORGANIZED CRIME [~~AND CRIMINAL STREET GANGS~~]

Sec. 71.01. DEFINITIONS. In this chapter,

(a) "Combination" means three or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

(c) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02 [~~of this code~~].

[~~(d) "Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.~~]

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination [~~or as a member of a criminal street gang~~], he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, [~~or~~] forgery, *deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle*;

(2) any [~~felony~~] gambling offense *punishable as a Class A misdemeanor*;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance;

(8) any felony offense under Chapter 32, Penal Code; or

(9) any offense under Chapter 36, Penal Code.

(b) Except as provided in *Subsections* [~~Subsection~~] (c) *and (d)* [~~of this section~~], an offense under this section is one category higher than the most serious offense listed in [~~Subdivisions (1) through (9) of~~] Subsection (a) [~~of this section~~] that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a *state jail* felony [~~of the third degree~~], except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in [~~Subdivisions (1) through (9) of~~] Subsection (a) [~~of this section~~] that the person conspired to commit.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether in voluntary and complete renunciation of the offense he withdrew from the combination before commission of an offense listed in Subsection (a) and made substantial effort to prevent the commission of the offense. If the defendant proves the issue in the affirmative by a preponderance of the evidence the offense is the same category of offense as the most serious offense listed in Subsection (a) that is committed, unless the defendant is convicted of conspiring to commit the offense, in which event the offense is one category lower than the most serious offense that the defendant conspired to commit.

Sec. 71.03. DEFENSES EXCLUDED. It is no defense to prosecution under Section 71.02 [~~of this code~~] that:

(1) one or more members of the combination are not criminally responsible for the object offense;

(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02 [~~of this code~~]; or

(4) once the initial combination of *three* [~~five~~] or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in the combination and are involved in a continuing course of conduct constituting an offense under this chapter.

Sec. 71.04. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

APPENDIX 7

Acts of 1995, 74th Leg., R.S., ch. 318, § 24, 1995 Tex. Gen. Laws (2734-63)

(S. B. 15) (eff. Sept. 1, 1995)

not classified as priority enforcement list sites. The tires collected under this section are eligible for reimbursement.

SECTION 26. Subsection (f), Section 361.112, Health and Safety Code, is amended to read as follows:

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by board of health rule. The department may grant an exception to this requirement if the department finds that circumstances warrant the exception. The prohibition provided by this subsection *regarding storage* does not apply to a *registered waste tire energy recovery facility or a waste tire energy recovery facility storage site. The prohibition provided by this subsection does not apply to a* person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or the department or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165.

SECTION 27. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Section 361.499 to read as follows:

Sec. 361.499. PRIORITY FOR CARRYOVER CREDIT PAYMENTS. Notwithstanding any other provision of this subchapter, any amounts paid from the waste tire recycling fund shall be used first to compensate waste tire processors for carryover credits that accrued before September 1, 1995, for waste tires shredded in excess of allocations. The carryover credits shall be paid as soon as practicable up to the amount appropriated for that purpose.

SECTION 28. Subsection (*l*), Section 361.477, Health and Safety Code, is repealed.

SECTION 29. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995.

(b) Section 1 of this Act takes effect immediately.

SECTION 30. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 23, 1995: Yeas 30, Nays 0; May 8, 1995, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 10, 1995, House granted request of the Senate; May 29, 1995, Senate adopted Conference Committee Report: Yeas 30, Nays 1; passed subject to the provisions of Article III, Section 49a, of the Constitution of Texas; passed the House, with amendments, on April 28, 1995: Yeas 129, Nays 0, one present not voting; May 10, 1995, House granted request of the Senate for appointment of Conference Committee; May 28, 1995, House adopted Conference Committee Report: Yeas 132, Nays 0, one present not voting; passed subject to the provisions of Article III, Section 49a, of the Constitution of Texas.

Approved June 5, 1995.

Effective September 1, 1995, except as provided in § 29(b).

CHAPTER 318

S.B. No. 15

AN ACT

relating to the prosecution, punishment, and creation of certain criminal offenses and to the sentencing of and facilities for housing certain defendants convicted of criminal offenses.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsections (a), (d), and (e), Section 12.42, Penal Code, are amended to read as follows:

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was an aircraft; or

(E) [~~(C)~~] an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

(A) an offense under Section 49.06;

(B) *an offense under Section 49.07 or 49.08, if the vehicle operated was a watercraft;*

(C) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994;

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a watercraft; or

(E) [~~(C)~~] an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

(d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.05, [~~or~~] 49.06, *49.07, or 49.08* that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

(e) A conviction may not be used for purposes of enhancement under this section if:

(1) the conviction was a final conviction under Subsection *(d)* [~~(c)~~] and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; and

(2) the person has not been convicted of an offense under Section 49.04, 49.05, [~~or~~] 49.06, *49.07, or 49.08* or any offense related to driving or operating a motor vehicle while intoxicated committed within 10 years before the date on which the offense for which the person is being tried was committed.

(f) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D.

SECTION 22. Chapter 49, Penal Code, is amended by adding Section 49.11 to read as follows:

Sec. 49.11. PROOF OF MENTAL STATE UNNECESSARY. Notwithstanding Section 6.02(b), proof of a culpable mental state is not required for conviction of an offense under this chapter.

SECTION 23. Section 71.01, Penal Code, is amended by adding Subsection (d) to read as follows:

(d) "Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

SECTION 24. Subsection (a), Section 71.02, Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination *or as a member of a criminal street gang*, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance;

(8) any felony offense under Chapter 32, Penal Code;

(9) any offense under Chapter 36, Penal Code; or

(10) any offense under Chapter 34, Penal Code.

SECTION 25. Section 125.001, Civil Practice and Remedies Code, as amended by Section 1, Chapter 968, and Section 2, Chapter 857, Acts of the 73rd Legislature, 1993, is reenacted and amended to read as follows:

Sec. 125.001. COMMON NUISANCE. A person who knowingly maintains a place to which persons habitually go for the purpose of prostitution or gambling in violation of the Penal Code, [~~for the purpose of reckless discharge of a firearm as described by Section 42.015, Penal Code,~~] for the purpose of engaging in organized criminal activity as a member of a combination or as a member of a criminal street gang as described by Section 71.02, Penal Code, or for the delivery or use of a controlled substance in violation of Chapter 481, Health and Safety Code, maintains a common nuisance.

SECTION 26. Subsection (b), Section 125.004, Civil Practice and Remedies Code, as amended by Section 3, Chapter 857, and Section 2, Chapter 968, Acts of the 73rd Legislature, 1993, is reenacted and amended to read as follows:

(b) Evidence that persons have been convicted of gambling, committing prostitution, [~~reckless discharge of a firearm as described by Section 42.015, Penal Code,~~] engaging in organized criminal activity as a member of a combination or a criminal street gang as described by Section 71.02, Penal Code, or delivering or using a controlled substance in violation of Chapter 481, Health and Safety Code, in the place involved is admissible to show knowledge on the part of the defendant that the act occurred. The originals or certified copies of the papers and judgments of those convictions are admissible in the suit for injunction, and oral evidence is admissible to show that the offense for which a person was convicted was committed at the place involved.

SECTION 27. Subsection (g), Section 125.004, Civil Practice and Remedies Code, is reenacted to read as follows:

(g) Proof that organized criminal activity by a member of a combination or a criminal street gang as described by Section 71.02, Penal Code, is frequently committed at a place or proof that a place is frequently used for engaging in organized criminal activity by a member of a combination or a criminal street gang as described by Section 71.02, Penal Code, is prima facie evidence that the proprietor knowingly permitted the act, unless the act constitutes conspiring to commit an offense as described by Section 71.02, Penal Code.

SECTION 28. Section 125.021, Civil Practice and Remedies Code, as amended by Section 1, Chapter 968, and Section 2, Chapter 857, Acts of the 73rd Legislature, 1993, is reenacted and amended to read as follows:

Sec. 125.021. PUBLIC NUISANCE. The habitual use or the threatened or contemplated habitual use of any place for any of the following purposes is a public nuisance:

(1) gambling, gambling promotion, or communicating gambling information prohibited by law;

(2) promotion or aggravated promotion of prostitution;

(3) compelling prostitution;

(4) commercial manufacture, commercial distribution, or commercial exhibition of obscene material;

(5) commercial exhibition of live dances or other acts depicting real or simulated sexual intercourse or deviate sexual intercourse;

(6) engaging in a voluntary fight between a man and a bull if the fight is for a thing of value or a championship, if a thing of value is wagered on the fight, or if an admission fee for the fight is directly or indirectly charged, as prohibited by law;

APPENDIX 8

Acts of 1997, 75th Leg., R.S., ch. 189, § 9, 1997 Tex. Gen. Laws (1045-58)

(H. B. 1185) (eff. May 21, 1997)

CHAPTER 188

H.B. No. 1050

AN ACT

relating to conditions of parole or mandatory supervision for an inmate released after serving a sentence for the offense of stalking.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (1), Subsection (o), Section 8, Article 42.18, Code of Criminal Procedure, as amended by Senate Bill No. 97, Acts of the 75th Legislature, 1997, is amended to read as follows:

(o)(1) In addition to other conditions imposed by a parole panel under this article, the parole panel may require as a condition of parole or release to mandatory supervision that an inmate serving a sentence for an offense under Section 42.072, Penal Code:

(A) attend psychological counseling sessions of a type and for a duration as specified by the parole panel, if the parole panel determines in consultation with a local mental health services provider that appropriate mental health services are available through the Texas Department of Mental Health and Mental Retardation in accordance with Section 534.053, Health and Safety Code, or through another mental health services provider; and

(B) [~~, may~~] not:

(i) [~~(A)~~] communicate directly or indirectly with the victim; or

(ii) [~~(B)~~] go to or near the residence, place of employment, or business of the victim or to or near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on March 26, 1997: Yeas 145, Nays 0, 1 present, not voting; passed by the Senate on May 6, 1997: Yeas 30, Nays 0.

Approved May 21, 1997.

Effective May 21, 1997.

CHAPTER 189

H.B. No. 1185

AN ACT

relating to the fraudulent exercise of certain governmental functions and the fraudulent creation or use of certain pleadings, governmental documents, and records; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 32.21(e) and (f), Penal Code, are amended to read as follows:

(e) An offense under this section is a felony of the third degree if the writing is or purports to be:

(1) part of an issue of money, securities, postage or revenue stamps;

(2) a government record listed in Section *37.01(2)(C)* [~~37.01(1)(C)~~]; or

(3) other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

(d) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was a license, certificate, permit, seal, title, *letter of patent*, or similar document issued by government, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.13, the actor may be prosecuted under any of those sections.

SECTION 7. Section 37.11, Penal Code, is amended to read as follows:

Sec. 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an offense if he:

(1) impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts; *or*

(2) knowingly purports to exercise any function of a public servant or of a public office, including that of a judge and court, and the position or office through which he purports to exercise a function of a public servant or public office has no lawful existence under the constitution or laws of this state or of the United States.

(b) An offense under this section is [~~a Class A misdemeanor unless the person impersonated a peace officer, in which event it is~~] a felony of the third degree.

SECTION 8. Chapter 37, Penal Code, is amended by adding Section 37.13 to read as follows:

Sec. 37.13. RECORD OF A FRAUDULENT COURT. (a) A person commits an offense if the person makes, presents, or uses any document or other record with:

(1) knowledge that the document or other record is not a record of a court created under or established by the constitution or laws of this state or of the United States; and

(2) the intent that the document or other record be given the same legal effect as a record of a court created under or established by the constitution or laws of this state or of the United States.

(b) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section on two or more occasions.

(c) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.10, the actor may be prosecuted under any of those sections.

SECTION 9. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance;

(8) any felony offense under Chapter 32, Penal Code;

(9) any offense under Chapter 36, Penal Code; [or]

(10) any offense under Chapter 34, Penal Code; *or*

(11) any offense under Section 37.11(a), Penal Code.

SECTION 10. Chapter 37, Penal Code, is amended by adding Section 37.101 to read as follows:

Sec. 37.101. FRAUDULENT FILING OF FINANCING STATEMENT. (a) A person commits an offense if the person knowingly presents for filing or causes to be presented for filing a financing statement that the person knows:

(1) is forged;

(2) contains a material false statement; or

(3) is groundless.

(b) An offense under Subsection (a)(1) is a felony of the third degree, unless it is shown on the trial of the offense that the person had previously been convicted under this section on two or more occasions, in which event the offense is a felony of the second degree. An offense under Subsection (a)(2) or (a)(3) is a Class A misdemeanor, unless the person commits the offense with the intent to defraud or harm another, in which event the offense is a state jail felony.

SECTION 11. Chapter 1, Code of Criminal Procedure, is amended by adding Article 1.052 to read as follows:

Art. 1.052. SIGNED PLEADINGS OF DEFENDANT. (a) A pleading, motion, and other paper filed for or on behalf of a defendant represented by an attorney must be signed by at least one attorney of record in the attorney's name and state the attorney's address. A defendant who is not represented by an attorney must sign any pleading, motion, or other paper filed for or on the defendant's behalf and state the defendant's address.

(b) The signature of an attorney or a defendant constitutes a certificate by the attorney or defendant that the person has read the pleading, motion, or other paper and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry that the instrument is not groundless and brought in bad faith or groundless and brought for harassment, unnecessary delay, or other improper purpose.

(c) If a pleading, motion, or other paper is not signed, the court shall strike it unless it is signed promptly after the omission is called to the attention of the attorney or defendant.

(d) An attorney or defendant who files a fictitious pleading in a cause for an improper purpose described by Subsection (b) or who makes a statement in a pleading that the attorney or defendant knows to be groundless and false to obtain a delay of the trial of the cause or for the purpose of harassment shall be held guilty of contempt.

(e) If a pleading, motion, or other paper is signed in violation of this article, the court, on motion or on its own initiative, after notice and hearing, shall impose an appropriate sanction, which may include an order to pay to the other party or parties to the prosecution or to the general fund of the county in which the pleading, motion, or other paper was filed the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney's fees.

(f) A court shall presume that a pleading, motion, or other paper is filed in good faith. Sanctions under this article may not be imposed except for good cause stated in the sanction order.

(g) A plea of "not guilty" or "no contest" or "nolo contendere" does not constitute a violation of this article. An allegation that an event took place or occurred on or about a particular date does not constitute a violation of this article.

(h) In this article, "groundless" means without basis in law or fact and not warranted by a good faith argument for the extension, modification, or reversal of existing law.

SECTION 12. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.26 to read as follows:

APPENDIX 9

Acts of 1999, 76th Leg., R.S., ch. 685, § 8, 1999 Tex. Gen. Laws (3256-58)

(H. B. 668) (eff. Sept. 1, 1999)

(2) the actor was at the time of the offense an owner or employee described by Subsection (e)(1) and the offense was committed at a business location described by that subsection.

(h) In this section, "institution of higher education," "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134.

SECTION 2. The change in law made by this Act applies 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 covered by the law in effect when 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. This Act takes effect September 1, 1999.

SECTION 4. The importance of this legislation and the crewded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 8, 1999, by a non-record vote; passed by the Senate on May 26, 1999: Yeas 30, Nays 0.

Approved June 18, 1999.

Effective September 1, 1999.

CHAPTER 685

H.B. No. 668

AN ACT

relating to missing children, to the duty of law enforcement with respect to missing children, and to certain criminal offenses frequently committed against missing children.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 2.13, Code of Criminal Procedure, is amended to read as follows:

Art. 2.13. DUTIES AND POWERS. *(a)* It is the duty of every peace officer to preserve the peace within *the officer's* [~~his~~] jurisdiction. To effect this purpose, *the officer* [~~he~~] shall use all lawful means.

(b) The officer [~~He~~] shall:

(1) in every case [~~where he is~~] authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime;

(2) [~~. He shall~~] execute all lawful process issued to *the officer* [~~him~~] by any magistrate or court;

(3) [~~. He shall~~] give notice to some magistrato of all offenses committod within *the officer's* [~~his~~] jurisdiction, where *the officer* [~~he~~] has good reason to believe there has been a violation of the penal law; *and*

(4) [~~. He shall~~] arrest offenders without warrant in every case where *the officer* [~~he~~] is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.

(c) It is the duty of every officer to take possession of a child under Article 62.009(g).

SECTION 2. Chapter 62, Code of Criminal Procedure (formerly Chapter 79, Human Resources Code, redesignated as Chapter 62 by Chapter 1427, Acts of the 75th Legislature, Regular Session, 1997), is amended by adding Article 62.0015 to read as follows:

Art. 62.0015. PRESUMPTION REGARDING PARENTAGE. For purposes of this chapter, a person named as a child's mother or father in the child's birth certificate is presumed to be the child's parent.

SECTION 3. Article 62.006(b), Code of Criminal Procedure (formerly Section 79.006(b), Human Resources Code, redesignated as Article 62.006(b) by Chapter 1427, Acts of the 75th Legislature, Regular Session, 1997), is amended to read as follows:

(b) At any time a report is made for a missing person the law enforcement officer taking the report *shall* [~~may~~] complete a dental release form that states that the person is missing and that there is reason to believe that the person has not voluntarily relocated or removed himself from communications with others and that authorizes the bearer of the release to obtain dental information records from any dentist or physician in this state.

SECTION 4. Article 62.009(a), Code of Criminal Procedure (formerly Section 79.008(a), Human Resources Code, redesignated as Article 62.009(a) by Chapter 1427, Acts of the 75th Legislature, Regular Session, 1997), is amended and reenacted to conform to Chapters 51 and 771, Acts of the 75th Legislature, Regular Session, 1997, to read as follows:

(a) Local law enforcement agencies, on receiving a report of a missing child or a missing person, shall:

(1) if the subject of the report is a child and the well-being of the child is in danger, immediately start an investigation in order to determine the present location of the child;

(2) if the subject of the report is a person other than a child or if the subject of the report is a child whose well-being is not considered to be in danger, start an investigation with due diligence in order to determine the present location of the person;

(3) immediately enter the name of the child or person into the clearinghouse and the national crime information center missing person file if the child or person meets the center's criteria, with all available identifying features such as dental records, fingerprints, other physical characteristics, and a description of the clothing worn when last seen, and all available information describing any person reasonably believed to have taken or retained the missing child or missing person; and

[~~(4) on determining the location of a child under Subdivision (1) or (2), other than a child who is subject to the continuing jurisdiction of a district court, an officer may take possession of the child and shall deliver or arrange for the delivery of the child to a person entitled to possession of the child. If the person entitled to possession of the child is not immediately available, the law enforcement officer shall deliver the child to the Department of Protective and Regulatory Services.~~]

(4) inform the person who filed the report of the missing child or missing person that the information will be entered into the clearinghouse and the national crime information center missing person file.

SECTION 5. Article 62.009, Code of Criminal Procedure (formerly Section 79.008, Human Resources Code, redesignated as Article 62.009 by Chapter 1427, Acts of the 75th Legislature, Regular Session, 1997), is amended to conform to Chapter 51, Acts of the 75th Legislature, Regular Session, 1997, and to relocate and amend language enacted by that chapter by adding Subsection (g) to read as follows:

(g) On determining the location of a child under Subsection (a)(1) or (2), other than a child who is subject to the continuing jurisdiction of a district court, an officer shall take possession of the child and shall deliver or arrange for the delivery of the child to a person entitled to possession of the child. If the person entitled to possession of the child is not immediately available, the law enforcement officer shall deliver the child to the Department of Protective and Regulatory Services.

SECTION 6. Section 262.007(a), Family Code, is amended to read as follows:

(a) A law enforcement officer who, during a criminal investigation relating to a child's custody, discovers that a child is a missing child and believes that a person may flee with or conceal the child *shall* [~~may~~] take possession of the child and provide for the delivery of the child as provided by Subsection (b).

SECTION 7. Section 25.04(b), Penal Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor, *unless it is shown on the trial of the offense that the actor intended to commit a felony against the child, in which event an offense under this section is a felony of the third degree.*

SECTION 8. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transpertation, ropair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a contrelled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale premotion or possession of any obscene material or obscene device with the intent te wholesale promote the same;

(7) any *offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward* [~~unlawful employment, authorization, or inducing of~~] a child younger than *18* [~~17~~] years of age [~~in an obscene sexual performance~~];

(8) any felony offense under Chapter 32, Penal Code;

(9) any offense under Chapter 36, Penal Code;

(10) any offense under Chapter 34, Penal Code; or

(11) any offense under Section 37.11(a), Penal Code.

SECTION 9. The changes in law made by Sections 7 and 8 of this Act apply only to an offense committod on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when 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 10. This Act takes effect September 1, 1999.

SECTION 11. The impertance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 8, 1999, by a non-record vote; passed by the Senate on May 26, 1999: Yeas 30, Nays 0.

Approved June 18, 1999.

Effective September 1, 1999.

CHAPTER 686

H.B. No. 690

AN ACT

relating to the penalty for cutting a fence used for certain animals.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 28.03(b), Penal Code, is amended to read as follows:

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

APPENDIX 10

Acts of 2003, 78th Leg., R.S., ch. 641, § 3, 2003 Tex. Gen. Laws (2045-46)

(H. B. 2096) (eff. Sept. 1, 2003)

Passed by the House on April 25, 2003: Yeas 146, Nays 0, 2 present, not voting; passed by the Senate on May 27, 2003: Yeas 31, Nays 0.

Approved June 20, 2003.

Effective June 20, 2003.

CHAPTER 641

H.B. No. 2096

AN ACT

relating to criminal consequences of conduct that involves certain trafficking or transporting of persons.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.4191 to read as follows:

Sec. 545.4191. PERSON RIDING IN TRAILER OR SEMITRAILER DRAWN BY TRUCK, ROAD TRACTOR, OR TRUCK TRACTOR. (a) A person may not operate a truck, road tractor, or truck tractor when another person occupies a trailer or semitrailer being drawn by the truck, road tractor, or truck tractor.

(b) It is a defense to prosecution under this section that:

(1) the person was operating or towing the vehicle:

(A) in a parade or in an emergency;

(B) to transport farmworkers from one field to another field on a farm-to-market road, ranch-to-market road, or county road outside a municipality; or

(C) in a hayride permitted by the governing body of or a law enforcement agency of each county or municipality in which the hayride will occur;

(2) the person operating or towing the vehicle did not know that another person occupied the trailer or semitrailer; or

(3) the person occupying the trailer or semitrailer was in a part of the trailer or semitrailer designed for human habitation.

(c) An offense under this section is a Class B misdemeanor.

SECTION 2. Title 5, Penal Code, is amended by adding Chapter 20A to read as follows:

CHAPTER 20A. TRAFFICKING OF PERSONS

Sec. 20A.01. DEFINITIONS. In this chapter:

(1) "Forced labor or services" means labor or services that are performed or provided by another person and obtained through an actor's:

(A) threatening to cause bodily injury to another;

(B) restraining another in a manner described by Section 20.01(1); or

(C) withholding from another the person's:

(i) government records;

(ii) identifying information; or

(iii) personal property.

(2) "Traffic" means to transport another person or to entice, recruit, harbor, provide, or otherwise obtain another person for transport by deception, coercion, or force.

Sec. 20A.02. TRAFFICKING OF PERSONS. (a) A person commits an offense if the person knowingly traffics another person with the intent that the trafficked person engage in:

(1) forced labor or services; or

(2) conduct that constitutes an offense under Chapter 43.

(b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the offense is committed under Subsection (a)(2) and the person who is trafficked is younger than 14 years of age at the time of the offense; or

(2) the commission of the offense results in the death of the person who is trafficked.

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

SECTION 3. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32[~~, Penal Code~~];

(9) any offense under Chapter 36[~~, Penal Code~~];

(10) any offense under Chapter 34[~~, Penal Code~~]; [~~or~~]

(11) any offense under Section 37.11(a); *or*

(12) any offense under Chapter 20A[~~, Penal Code~~].

SECTION 4. This Act takes effect September 1, 2003.

Passed by the House on April 14, 2003, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2096 on May 22, 2003, by a non-record vote; passed by the Senate, with amendments, on May 21, 2003, by a viva-voce vote.

Approved June 20, 2003.

Effective September 1, 2003.

CHAPTER 642

H.B. No. 2099

AN ACT

relating to the determination of the conservatorship of, and the right of possession of or access to, a child by a person who has a history of family violence.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 153.004, Family Code, is amended by adding Subsection (f) to read as follows:

APPENDIX 11

Acts of 2005, 79th Leg., R.S., ch. 1162, § 5, 2005 Tex. Gen. Laws (3802-07)

(H. B. 3376) (eff. Sept. 1, 2005)

(b) The application must contain:

(1) the name and social security number of the sole proprietor, if the applicant is a sole proprietor;

(2) the name and social security number of each general partner who is an individual, if the applicant is a partnership;

(3) the name and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the applicant is a corporation; and

(4) any other information that the department may reasonably require.

(f) The department shall post on the department's Internet website a list of all of the individuals named in applications as required by Subsections (b)(1)—(3). The department may not post on its Internet website a social security number of an individual required to be named in an application under Subsections (b)(1)—(3).

SECTION 2. Section 241.023(b), Health and Safety Code, is amended to read as follows:

(b) A license may be renewed annually after payment of the required fee *and submission of an application for license renewal that contains the information required by Section 241.022(b).*

SECTION 3. The change in law made by this Act applies only to an application for an original license or a renewal of a license submitted on or after the effective date of this Act. An application for an original license or a renewal of a license submitted before the effective date of this Act is covered by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

Passed by the House on May 13, 2005, by a non-record vote; passed by the Senate on May 25, 2005: Yeas 31, Nays 0.

Approved June 18, 2005.

Effective September 1, 2005.

CHAPTER 1162

H.B. No. 3376

AN ACT

relating to the prosecution and punishment of certain criminal offenses involving theft and fraud and to the provision of notice of the commission of those offenses to certain licensing entities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 34.01(2) and (3), Penal Code, are amended to read as follows:

(2) "Funds" includes:

(A) coin or paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issue;

(B) United States silver certificates, United States Treasury notes, and Federal Reserve System notes; [~~and~~]

(C) *an* official foreign bank *note* [~~notes~~] that *is* [~~are~~] customarily used and accepted as a medium of exchange in a foreign country and *a* foreign bank *draft; and*

(D) currency or its equivalent, including an electronic fund, personal check, bank check, traveler's check, money order, bearer negotiable instrument, bearer investment security, bearer security, or certificate of stock in a form that allows title to pass on delivery [~~drafts~~].

(3) *"Financial institution" has the meaning assigned by Section 32.01.* [~~"Peace officer" means a person who is elected, appointed, or employed by a governmental entity and who is a peace officer under Article 2.12, Code of Criminal Procedure, or other law.~~]

SECTION 2. Section 34.02, Penal Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (a-1), (f), (g), and (h) to read as follows:

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

(1) acquires or maintains an interest in, [~~receives,~~] conceals, possesses, transfers, or transports the proceeds of criminal activity;

(2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; [~~or~~]

(3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity; *or*

(4) finances or invests or intends to finance or invest funds that the person believes are intended to further the commission of criminal activity.

(a-1) Knowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish a culpable mental state under this section.

(b) For purposes of [~~Subsection (a)(3) of~~] this section, a person is presumed to believe that funds are the proceeds of *or are intended to further the commission of* criminal activity if a peace officer or a person acting at the direction of a peace officer represents to the person that the funds are proceeds of *or are intended to further the commission of* criminal activity, *as applicable,* regardless of whether the peace officer or person acting at the peace officer's direction discloses the person's status as a peace officer or that the person is acting at the direction of a peace officer.

(e) An offense under this section is:

(1) *a state jail felony if the value of the funds is $1,500 or more but less than $20,000;*

(2) a felony of the third degree if the value of the funds is *$20,000* [~~$3,000~~] or more but less than *$100,000* [~~$20,000~~];

(3) [~~(2)~~] a felony of the second degree if the value of the funds is *$100,000* [~~$20,000~~] or more but less than *$200,000* [~~$100,000~~]; or

(4) [~~(3)~~] a felony of the first degree if the value of the funds is *$200,000* [~~$100,000~~] or more.

(f) For purposes of this section, if proceeds of criminal activity are related to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the value of the proceeds aggregated in determining the classification of the offense.

(g) For purposes of this section, funds on deposit at a branch of a financial institution are considered the property of that branch and any other branch of the financial institution.

(h) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 3. Chapter 34, Penal Code, is amended by adding Section 34.021 to read as follows:

Sec. 34.021. PROTECTION FROM CIVIL LIABILITY. Notwithstanding Section 1.03(c), a financial institution or an agent of the financial institution acting in a manner described by Section 34.02(c) is not liable for civil damages to a person who:

(1) claims an ownership interest in funds involved in an offense under Section 34.02; or

(2) conducts with the financial institution or an insurer, as defined by Article 1.02, Insurance Code, a transaction concerning funds involved in an offense under Section 34.02.

SECTION 4. Chapter 35, Penal Code, is amended by amending Sections 35.01 and 35.02 and adding Sections 35.015 and 35.025 to read as follows:

Sec. 35.01. DEFINITIONS. In this chapter:

(1) *"Insurance policy" means a written instrument in which is provided the terms of any certificate of insurance, binder of coverage, contract of insurance, benefit plan, nonprofit hospital service plan, motor club service plan, surety bond, cash bond, or any*

other alternative to insurance authorized by Chapter 601, Transportation Code. The term includes any instrument authorized to be regulated by the Texas Department of Insurance. [~~"Health care goods" means a tangible product, device, medicine, or other object provided in conjunction with a health care service.~~]

(2) [~~"Health care provider" means a person who renders health care services or an agent or employee of an organization that renders or provides a facility and means to render health care services. The term includes a physician, surgeon, person who may be selected by an insured or a beneficiary under Article 21.52, Insurance Code, and person defined as a provider of health care under Section 152.003, Occupations Code.~~

[~~(3) "Health care service" means a service that is intended to improve or maintain the physical or mental condition of an individual and that is rendered, directed, or supervised by a health care provider.~~

[~~(4)~~] "Insurer" *has the meaning assigned by Article 1.02, Insurance Code* [~~means a person who engages in the business of insurance in this state, including:~~

[~~(A) an insurer that is not authorized to do business in this state;~~

[~~(B) a health maintenance organization;~~

[~~(C) a group hospital service corporation regulated under Chapter 842, Insurance Code; and~~

[~~(D) any person who self-insures and provides health care benefits to the person's employees~~].

(3) [~~(5)~~] "Statement" means an oral or written communication or a record or documented representation of fact *made to an insurer* [~~evidencing a loss, injury, or expense~~]. The term includes computer-generated information.

(4) "Value of the claim" means the total dollar amount of a claim for payment under an insurance policy or, as applicable, the value of the claim determined under Section 35.025.

Sec. 35.015. MATERIALITY. A statement is material for the purposes of this chapter, regardless of the admissibility of the statement at trial, if the statement could have affected:

(1) the eligibility for coverage or amount of the payment on a claim for payment under an insurance policy; or

(2) the decision of an insurer whether to issue an insurance policy.

Sec. 35.02. INSURANCE FRAUD. (a) A person commits an offense if, with intent to defraud or deceive an insurer, the person, *in support of a claim for payment under an insurance policy:*

(1) prepares or causes to be prepared [~~or presents to an insurer in support of a claim for payment under a health or property and casualty insurance policy~~] a statement that:

(A) the person knows contains false or misleading *material* information; *and*

(B) is presented to an insurer; or

(2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information [~~concerning a matter that is material to the claim, and the matter affects a person's right to a payment or the amount of payment to which a person is entitled~~].

(a-1) A person commits an offense if the person, with intent to defraud or deceive an insurer and in support of an application for an insurance policy:

(1) prepares or causes to be prepared a statement that:

(A) the person knows contains false or misleading material information; and

(B) is presented to an insurer; or

(2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

(b) A person commits an offense if, with intent to defraud or deceive an insurer, the person solicits, offers, pays, or receives a benefit in connection with the furnishing of [~~health care~~] goods or services for which a claim for payment is submitted under *an* [~~a health or property and casualty~~] insurance policy.

(c) [~~For purposes of Subsection (a), information concerning a matter that is material to a claim for payment under an insurance policy includes information concerning:~~

[~~(1) whether health care goods or services were provided;~~

[~~(2) whether health care goods or services were medically necessary under professionally accepted standards;~~

[~~(3) the nature of the health care goods or services provided;~~

[~~(4) the date on which health care goods or services were provided;~~

[~~(5) the medical record of goods or services provided;~~

[~~(6) the condition treated or diagnosis made;~~

[~~(7) the identity and applicable license of the provider or the recipient of health care goods or services;~~

[~~(8) whether property was damaged or lost in the manner and under the circumstances described in a statement related to a claim for insurance payment; or~~

[~~(9) whether any other claim for insurance payment has been communicated to any other insurer concerning property damage or loss to the same property.~~

[~~(d)~~] An offense under *Subsection (a)* [~~this section~~] is:

(1) a Class C misdemeanor if the value of the claim is less than *$50* [~~$20~~];

(2) a Class B misdemeanor if the value of the claim is *$50* [~~$20~~] or more but less than $500;

(3) a Class A misdemeanor if the value of the claim is $500 or more but less than $1,500;

(4) a state jail felony if the value of the claim is $1,500 or more but less than $20,000;

(5) a felony of the third degree if the value of the claim is $20,000 or more but less than $100,000;

(6) a felony of the second degree if the value of the claim is $100,000 or more but less than $200,000; or

(7) a felony of the first degree if:

(A) the value of the claim is $200,000 or more; or

(B) *an act committed in connection with* [~~the value of the claim is less than $200,000 and~~] the commission of the offense *places* [~~placed~~] a person at risk of death or serious bodily injury.

(d) An offense under Subsection (a-1) is a state jail felony.

(e) The court shall order a defendant convicted of an offense under this section to pay restitution, including court costs and attorney's fees, to an affected insurer.

(f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(g) For purposes of this section, if the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

(h) If it is shown on the trial of an offense under this section that the actor submitted a bill for goods or services in support of a claim for payment under an insurance policy to the insurer issuing the policy, a rebuttable presumption exists that the actor caused the claim for payment to be prepared or presented.

Sec. 35.025. VALUE OF CLAIM. (a) Except as provided by Subsection (b) and subject to Subsection (c), for the purposes of Section 35.02(c), if the value of a claim is not readily ascertainable, the value of the claim is:

(1) the fair market value, at the time and place of the offense, of the goods or services that are the subject of the claim; or

(2) the cost of replacing the goods or services that are the subject of the claim within a reasonable time after the claim.

(b) If goods or services that are the subject of a claim cannot be reasonably ascertained under Subsection (a), the goods or services are considered to have a value of $500 or more but less than $1,500.

(c) If the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

SECTION 5. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 *or 35*;

(11) any offense under Section 37.11(a); or

(12) any offense under Chapter 20A.

SECTION 6. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

Art. 12.01. FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

(A) murder and manslaughter;

(B) 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; or

(C) 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;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(D) injury to a child, elderly individual, or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code;

(E) sexual assault, except as provided by Subdivision (1) or (5); or

(F) arson;

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) securing execution of document by deception; or

(C) a violation under Sections *162.403(22)-(39)* [~~153.403(22)-(39)~~], Tax Code;

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

(A) theft, burglary, robbery;

(B) kidnapping;

(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; [~~or~~]

(D) abandoning or endangering a child; *or*

(E) insurance fraud;

(5) ten years from the 18th birthday of the victim of the offense:

(A) indecency with a child under Section 21.11(a)(1) or (2), Penal Code; or

(B) except as provided by Subdivision (1), sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code; or

(6) three years from the date of the commission of the offense: all other felonies.

SECTION 7. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0181 to read as follows:

Art. 42.0181. NOTICE OF THEFT, FRAUD, MONEY LAUNDERING, OR INSURANCE FRAUD PROVIDED BY CLERK OF COURT. Not later than the fifth day after the date a person who holds a certificate of authority, license, or other authority issued by the Texas Department of Insurance is convicted of or granted deferred adjudication for an offense under Chapter 31, 32, 34, or 35, Penal Code, the clerk of the court in which the conviction or order of deferred adjudication is entered shall provide to the Texas Department of Insurance written notice of the person's conviction or deferred adjudication, including the offense on which the conviction or deferred adjudication was based.

SECTION 8. (a) The changes in law made by this Act to Chapters 34, 35, and 71, Penal Code, 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 covered by the law in effect at the time 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 was committed before that date.

(b) The change in law made by Article 12.01, Code of Criminal Procedure, as amended by this Act, does not apply to an offense if the prosecution of that offense became barred by limitation before the effective date of this Act. The prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 9. This Act takes effect September 1, 2005.

Passed by the House on May 10, 2005, by a non-record vote; the House adopted H.C.R. No. 235 authorizing certain corrections in H.B. No. 3376 on May 30, 2005, by a non-record vote; passed by the Senate on May 25, 2005: Yeas 31, Nays 0 ; the Senate adopted H.C.R. No. 235 authorizing certain corrections in H.B. No. 3376 on May 30, 2005, by a viva-voce vote.

Approved June 18, 2005.

Effective September 1, 2005.

APPENDIX 12

Acts of 2007, 80th Leg., R.S., ch. 1163, § 2, 2007 Tex. Gen. Laws (3991-92)

(H. B. 126) (eff. Sept. 1, 2007)

(7) make surveys of public and private industries, resources, and facilities in the state that are necessary to carry out the purposes of this chapter;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and provide for payment for use under terms and conditions agreed on if the facilities are used and payment is necessary;

(9) establish a register of persons with types of training and skills important in disaster mitigation, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster;

(11) *assist political subdivisions in developing plans for the humane evacuation, transport, and temporary sheltering of service animals and household pets in a disaster;*

(12) prepare, for issuance by the governor, executive orders and regulations necessary or appropriate in coping with disasters;

(13) [~~(12)~~] cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster mitigation, preparation, response, and recovery; and

(14) [~~(13)~~] do other things necessary, incidental, or appropriate for the implementation of this chapter.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Passed by the House on April 27, 2007: Yeas 132, Nays 1, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 88 on May 16, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 88 on May 21, 2007: Yeas 142, Nays 1, 2 present, not voting; passed by the Senate, with amendments, on May 11, 2007: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 88 on May 25, 2007: Yeas 30, Nays 0.

Approved June 15, 2007.

Effective June 15, 2007.

CHAPTER 1163

H.B. No. 126

AN ACT

relating to the offenses of fraudulent use or possession of identifying information and of engaging in organized criminal activity.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 32.51, Penal Code, is amended by amending Subsection (b) and adding Subsections (b–1) and (b–2) to read as follows:

(b) A person commits an offense if the person, *with the intent to harm or defraud another,* obtains, possesses, transfers, or uses:

(1) identifying information of another person without the other person's consent*; or*

(2) without legal authorization, information concerning a deceased person that would be identifying information of that person were that person alive [~~and with intent to harm or defraud another~~].

(b–1) For the purposes of Subsection (b), the actor is presumed to have the intent to harm or defraud another if the actor possesses:

(1) the identifying information of three or more other persons;

(2) information described by Subsection (b)(2) concerning three or more deceased persons; or

(3) information described by Subdivision (1) or (2) concerning three or more persons or deceased persons.

(b-2) The presumption established under Subsection (b-1) does not apply to a business or other commercial entity or a government agency that is engaged in a business activity or governmental function that does not violate a penal law of this state.

SECTION 2. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a); [~~or~~]

(12) any offense under Chapter 20A; *or*

(13) any offense under Section 37.10.

SECTION 3. This Act applies 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 covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 4. This Act takes effect September 1, 2007.

Passed by the House on April 4, 2007: Yeas 144, Nays 1, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 126 on May 17, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 126 on May 26, 2007: Yeas 139, Nays 0, 2 present, not voting; passed by the Senate, with amendments, on May 15, 2007: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 126 on May 26, 2007: Yeas 30, Nays 0.

Approved June 15, 2007.

Effective September 1, 2007.

APPENDIX 13

Acts of 2009, 81st Leg., R.S., ch. 153, § 2, 2009 Tex. Gen. Laws (483-86)

(S. B. 2225) (eff. Sept. 1, 2009)

income housing tax credits under Subchapter DD, Chapter 2306, Government Code; or

(2) receives tenant-based voucher assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(d) For purposes of Subsection (c), "costs related to submetering" means water costs as well as any other applicable taxes and surcharges that are charged by the retail public utility to the *owner or manager of a* manufactured home rental community *or apartment house* [~~owner or manager~~].

SECTION 2. This Act takes effect September 1, 2009.

Passed the Senate on April 28, 2009: Yeas 31, Nays 0; the Senate concurred in House amendment on May 14, 2009: Yeas 30, Nays 1; passed the House, with amendment, on May 11, 2009: Yeas 142, Nays 3, two present not voting.

Approved May 23, 2009.

Effective September 1, 2009.

CHAPTER 152

S.B. No. 2134

AN ACT

relating to the composition and voting procedures of the Comal County Juvenile Board.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (a), Section 152.0521, Human Resources Code, is amended to read as follows:

(a) The Comal County Juvenile Board is composed of:

(1) the county judge;

(2) the judge of each county court at law in the county;

(3) the judge of the 207th District Court;

(4) *the judge of the 433rd District Court;*

(5) an additional judge of the district courts having jurisdiction in Comal County, to be appointed biennially by the local administrative district judge; and

(6) [~~(5)~~] the criminal district attorney of Comal County.

SECTION 2. Subsection (a-1), Section 152.0521, Human Resources Code, is repealed.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

Passed the Senate on April 30, 2009: Yeas 31, Nays 0; passed the House on May 12, 2009: Yeas 149, Nays 0, one present not voting.

Approved May 23, 2009.

Effective May 23, 2009.

CHAPTER 153

S.B. No. 2225

AN ACT

relating to the civil and criminal consequences of engaging in certain conduct involving the transporting or transferring of a firearm and to creating the offense of firearm smuggling.

SECTION 1. Chapter 46, Penal Code, is amended by adding Section 46.14 to read as follows:

Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an offense if the person knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of the laws of any state or of the United States. For purposes of this subsection, a person is considered to engage in the business of transporting or transferring a firearm if the person engages in that conduct:

(1) on more than one occasion; or

(2) for profit or any other form of remuneration.

(b) An offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) This section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 2. Subsection (a), Section 71.02, Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, *the person* [~~he~~] commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A; [~~or~~]

(13) any offense under Section 37.10; *or*

(14) any offense under Section 46.06(a)(1) or 46.14.

SECTION 3. Subdivision (2), Article 59.01, Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code;

(vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code; [~~or~~]

(ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code; *or*

(x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) *or (x)* of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) *or (x)* of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 4. Chapter 59, Code of Criminal Procedure, is amended by adding Article 59.011 to read as follows:

Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If property described by Article 59.01(2)(B)(x) is subject to forfeiture under this chapter and Article 18.18, the attorney representing the state may proceed under either this chapter or that article.

SECTION 5. The change in law made by this Act in amending Subsection (a), Section 71.02, Penal Code, applies 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 when 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 6. Subdivision (2), Article 59.01, Code of Criminal Procedure, as amended by this Act, and Article 59.011, Code of Criminal Procedure, as added by this Act, apply only to the forfeiture of property used in the commission of an offense committed on or after the effective date of this Act. Forfeiture of property used in the commission of an offense committed before the effective date of this Act is governed by the law in effect when 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 7. This Act takes effect September 1, 2009.

Passed the Senate on April 23, 2009: Yeas 30, Nays 0; passed the House on May 13, 2009: Yeas 143, Nays 0, one present not voting.

Effective September 1, 2009.

CHAPTER 154

H.B. No. 360

AN ACT

relating to the crediting and charging of investment gains and losses on the assets held in trust by the Texas Municipal Retirement System and providing a guaranteed minimum credit to employee accounts.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 855.110, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The board of trustees shall adopt rates and tables that the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality and service experience of the system's members and annuitants. *In adopting rates and tables, the board of trustees shall adopt a discount rate that is not less than five percent in developing an annuity purchase rate.*

(d) In this section:

(1) "Annuity purchase rate" means the present value factor used to convert reserves to a monthly annuity based on the post-retirement discount rate assumption and the life expectancy of the retiree or beneficiary or both the retiree and the beneficiary at retirement under the selected form of payment.

(2) "Discount rate" means the interest rate used in determining the present value of future cash flows.

SECTION 2. Section 855.111(a), Government Code, is amended to read as follows:

(a) The board of trustees shall certify all current service contribution rates *and* [,] all prior service contribution rates[~~, and the current interest rate computed in accordance with Section 855.316(c) and approved in writing by the actuary~~].

SECTION 3. Section 855.205(d), Government Code, is amended to read as follows:

(d) On the basis of rates and tables adopted by the board, the actuary shall:

(1) annually compute the normal contribution rate for each participating municipality;

(2) annually compute the prior service contribution rate for each participating municipality;

(3) [~~compute the current interest rate in accordance with Section 855.316(b);~~

[~~(4)~~] compute the supplemental death benefits rate and the supplemental disability benefits rate for each participating municipality; and

(4) [~~(5)~~] make an annual valuation of the assets and liabilities of the funds of the retirement system.

SECTION 4. Section 855.307(a), Government Code, is amended to read as follows:

(a) The retirement system shall *credit or charge to* [~~deposit in~~] the account of a participating municipality in the municipality accumulation fund:

(1) all current service contributions made by the municipality to the retirement system;

(2) *net investment income or loss allocated to the fund under Section 855.317* [~~interest allowed as provided by this subtitle on money in the fund~~]; and

(3) the withdrawal charge for reinstatement of credited service as provided by Section 853.003.

SECTION 5. Section 855.308(a), Government Code, is amended to read as follows:

APPENDIX 14

Acts of 2009, 81st Leg., R.S., ch. 1130, § 1, 2009 Tex. Gen. Laws (3119-33)

(H. B. 2086) (eff. Sept. 1, 2009)

CHAPTER 1130

H.B. No. 2086

AN ACT

relating to the prevention, investigation, prosecution, and punishment for certain gang-related and other criminal offenses, including engaging in organized criminal activity, and to the consequences and costs of engaging in certain activities of a criminal street gang or certain other criminal activity; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A; [~~or~~]

(13) any offense under Section 37.10; *or*

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11.

SECTION 2. Section 15.031(e), Penal Code, is amended to read as follows:

(e) An offense under this section is one category lower than the solicited offense, *except that an offense under this section is the same category as the solicited offense if it is shown on the trial of the offense that the actor:*

(1) was at the time of the offense 17 years of age or older and a member of a criminal street gang, as defined by Section 71.01; and

(2) committed the offense with the intent to:

(A) further the criminal activities of the criminal street gang; or

(B) avoid detection as a member of a criminal street gang.

SECTION 3. Chapter 71, Penal Code, is amended by adding Sections 71.023, 71.028, and 71.029 to read as follows:

Sec. 71.023. DIRECTING ACTIVITIES OF CERTAIN CRIMINAL STREET GANGS. (a) A person commits an offense if the person knowingly initiates, organizes, plans, finances, directs, manages, or supervises a criminal street gang or members of a criminal

APPENDIX 15

Acts of 2009, 81st Leg., R.S., ch. 1357, § 2, 2009 Tex. Gen. Laws (4289-91)

(S. B. 554) (eff. Sept. 1, 2009)

SECTION 1. Subsection (b), Section 8A, Article 18.20, Code of Criminal Procedure, is amended to read as follows:

(b) A peace officer designated under Subsection (a) or under Section 5(b) may possess, install, operate, or monitor an electronic, mechanical, or other device to intercept wire, oral, or electronic communications if the officer:

(1) reasonably believes an immediate life-threatening situation exists that:

(A) is within the territorial jurisdiction of the officer or another officer the officer is assisting; and

(B) requires interception of communications before an order authorizing the interception can, with due diligence, be obtained under this section;

(2) reasonably believes there are sufficient grounds under this section on which to obtain an order authorizing the interception; and

(3) obtains oral or written consent to the interception before beginning the interception from:

(A) *a judge of competent jurisdiction;*

(B) a district judge for the county in which the device will be installed or used; or

(C) [~~(B)~~] a judge or justice of a court of appeals or of a higher court.

SECTION 2. The change in law made by this Act to Subsection (b), Section 8A, Article 18.20, Code of Criminal Procedure, applies only to the interception of a wire, oral, or electronic communication in an immediate life-threatening situation that occurs on or after the effective date of this Act. An interception of a wire, oral, or electronic communication in an immediate life-threatening situation that occurred before the effective date of this Act is covered by the law in effect on the date the life-threatening situation occurred, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2009.

Passed the Senate on April 23, 2009: Yeas 30, Nays 0; May 29, 2009, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 30, 2009, House granted request of the Senate; May 31, 2009, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0; passed the House, with amendment, on May 27, 2009: Yeas 148, Nays 0, one present not voting; May 30, 2009, House granted request of the Senate for appointment of Conference Committee; May 31, 2009, House adopted Conference Committee Report by the following vote: Yeas 144, Nays 0, one present not voting.

Approved June 19, 2009.

Effective September 1, 2009.

CHAPTER 1357

S.B. No. 554

AN ACT

relating to conduct constituting the offense of dog fighting and to the criminal and civil consequences of committing that offense.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsections (a), (b), and (e), Section 42.10, Penal Code, are amended to read as follows:

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

(1) causes a dog to fight with another dog;

(2) participates in the earnings of or operates a facility used for dog fighting;

(3) knowingly permits another to use any real estate, building, room, tent, arena, or other property for dog fighting;

(4) *owns or possesses dog-fighting equipment with the intent that the equipment be used to train a dog for dog fighting or in furtherance of dog fighting;*

(5) owns or trains a dog with the intent that the dog be used in an exhibition of dog fighting; or

(6) [~~(5)~~] attends as a spectator an exhibition of dog fighting.

(b) In this section:

(1) "Dog[~~, "dog~~] fighting" means any situation in which one dog attacks or fights with another dog.

(2) "Dog-fighting equipment" has the meaning assigned by Article 18.18(g), Code of Criminal Procedure.

(e) An offense under Subsection (a)(4), [~~or~~] (5), *or (6)* is a Class A misdemeanor. An offense under Subsection (a)(1), (2), or (3) is a state jail felony.

SECTION 2. Subsection (a), Section 71.02, Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A; [~~or~~]

(13) any offense under Section 37.10*; or*

(14) any offense under Section 42.10.

SECTION 3. Subdivision (2), Article 59.01, Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code;

(vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code; [~~or~~]

(ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code; *or*

(x) any offense under Section 42.10, Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) *or (x)* of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) *or (x)* of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 4. Chapter 59, Code of Criminal Procedure, is amended by adding Article 59.011 to read as follows:

Art. 59.011. If property described by Article 59.01(2)(B)(x) is subject to forfeiture under this chapter and Article 18.18, the attorney representing the state may proceed under either provision.

SECTION 5. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act or to the forfeiture of property used in the commission of that offense. An offense committed before the effective date of this Act, or the forfeiture of property used in the commission of that offense, is governed by the law in effect when 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 6. This Act takes effect September 1, 2009.

Passed the Senate on April 2, 2009: Yeas 31, Nays 0; passed the House on May 20, 2009: Yeas 135, Nays 0, one present not voting.

Approved June 19, 2009.

Effective September 1, 2009.

APPENDIX 16

Acts of 2011, 82nd Leg., R.S., ch. 68, § 8, 2011 Tex. Gen. Laws (118-24)

(S. B. 934) (eff. Sept. 1, 2011)

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Sections 9.805(c) and (e) or Section 9.806.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after the 2013 amendments take effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9.806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this chapter, as amended by the 2013 amendments, as the office in which to file a financing statement.

Sec. 9.808. PERSON ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this subchapter if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this subchapter:

(A) to continue the effectiveness of a financing statement filed before July 1, 2013; or

(B) to perfect or continue the perfection of a security interest.

Sec. 9.809. PRIORITY. The 2013 amendments determine the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this chapter as it existed before amendment determines priority.

SECTION 19. Chapter 11, Business & Commerce Code, is repealed.

SECTION 20. This Act takes effect July 1, 2013.

Passed the Senate on April 7, 2011: Yeas 30, Nays 1; the Senate concurred in House amendment on May 5, 2011: Yeas 31, Nays 0; passed the House, with amendment, on April 20, 2011: Yeas 148, Nays 0, one present not voting.

Approved May 17, 2011.

Effective July 1, 2013.

CHAPTER 68

S.B. No. 934

AN ACT

relating to the enforcement of tax laws; providing a criminal penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 13.13, Code of Criminal Procedure, is amended to read as follows:

Art. 13.13. CONSPIRACY. Criminal conspiracy may be prosecuted in the county where the conspiracy was entered into, in the county where the conspiracy was agreed to be executed, or in any county in which one or more of the conspirators does any act to effect an object of the conspiracy. *If the object of the conspiracy is an offense classified as a felony under the Tax Code, regardless of whether the offense was committed, the conspiracy may be prosecuted in any county in which venue is proper under the Tax Code for the offense.* If a conspiracy was entered into outside this State under circumstances that give this State jurisdiction to prosecute the offender, the offender may be prosecuted in the county where the conspiracy was agreed to be executed, [~~or~~] in the county where any one of the conspirators was found, or in Travis County.

SECTION 2. Article 13.21, Code of Criminal Procedure, is amended to read as follows:

Art. 13.21. ORGANIZED CRIMINAL ACTIVITY. The offense of engaging in organized criminal activity may be prosecuted in any county in which any act is committed to effect an objective of the combination *or, if the prosecution is based on a criminal offense classified as a felony under the Tax Code, in any county in which venue is proper under the Tax Code for the offense.*

SECTION 3. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.35 to read as follows:

Art. 13.35. MONEY LAUNDERING. Money laundering may be prosecuted in the county in which the offense was committed as provided by Article 13.18 or, if the prosecution is based on a criminal offense classified as a felony under the Tax Code, in any county in which venue is proper under the Tax Code for the offense.

SECTION 4. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0182 to read as follows:

Art. 42.0182. FINDINGS REGARDING TAX FRAUD. (a) In the trial of an offense under the Tax Code or an offense under the Penal Code related to the administration of taxes, the state may file a written request with the court in which the indictment or information is pending for the court to make affirmative findings regarding the commission of tax fraud as described by Subsection (b). The state must provide a copy of the written request to the defendant before the date the trial begins.

(b) If the state requests affirmative findings in the manner required by Subsection (a), the court shall make the requested affirmative findings and enter the findings in the papers in the case if the court finds by clear and convincing evidence that:

(1) the defendant's failure to pay a tax or file a report when due, as required by Title 2 or 3, Tax Code, was a result of fraud or an intent to evade the tax;

(2) the defendant altered, destroyed, or concealed any record, document, or thing, or presented to the comptroller any altered or fraudulent record, document, or thing, or otherwise engaged in fraudulent conduct for the apparent purpose of affecting the course or outcome of an audit, investigation, redetermination, or other proceeding before the comptroller; or

(3) the defendant's failure to file a report under Chapter 162, Tax Code, or to pay a tax under that chapter when the tax became due is attributable to fraud or an intent to evade the application of Chapter 162, Tax Code, or a rule adopted under Chapter 111 or 162, Tax Code.

SECTION 5. Section 403.012, Government Code, is amended to read as follows:

Sec. 403.012. ACCEPTANCE OF FEDERAL MONEY *OR PROPERTY. (a)* The comptroller may accept federal money for a state agency not otherwise restricted by statute or by rider or special provision in the General Appropriations Act, if the state agency has certified to the comptroller that the agency will be responsible for compliance with applicable federal and state law.

(b) The comptroller may accept money or property under a federal equitable sharing program. In accepting the money or property, the comptroller shall comply with federal program requirements, including those governing accounting and the permissible use of an award.

SECTION 6. Subsection (a), Section 411.109, Government Code, is amended to read as follows:

(a) The comptroller is entitled to obtain from the department criminal history record information maintained by the department that the comptroller believes is necessary for the enforcement or administration of Chapter 151, 152, [~~153,~~] 154, [~~or~~] 155, *or 162,* Tax Code, including criminal history record information that relates to a person who is:

(1) an applicant for a permit under any of those chapters;

(2) a permit holder under any of those chapters;

(3) an officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, owner, or managing employee of an applicant or permit holder under any of those chapters that is a corporation, association, joint venture, syndicate, partnership, or proprietorship;

(4) believed to have violated any of those chapters; or

(5) being considered by the comptroller for employment as a peace officer.

SECTION 7. Subdivision (4), Section 34.01, Penal Code, is amended to read as follows:

(4) "Proceeds" means funds acquired or derived directly or indirectly from, produced through, or realized through:

(A) an act; *or*

(B) conduct that constitutes an offense under Section 151.7032, Tax Code.

SECTION 8. Subsection (a), Section 71.02, Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10; [~~or~~]

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) [~~(14)~~] any offense under Section 42.10;

(16) [~~(14)~~] any offense under Section 46.06(a)(1) or 46.14; *or*

(17) any offense classified as a felony under the Tax Code.

SECTION 9. Chapter 101, Tax Code, is amended by adding Section 101.0021 to read as follows:

Sec. 101.0021. APPLICABILITY OF PENAL CODE. In addition to Section 1.03, Penal Code, Sections 15.02 and 15.04, Penal Code, and Title 11, Penal Code, apply to offenses prescribed by this code.

SECTION 10. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.00452 to read as follows:

Sec. 111.00452. EMPLOYMENT OF INVESTIGATORS. (a) In addition to the authority granted by Section 111.0045, an investigator employed under that section may investigate:

(1) any criminal offense under this code; or

(2) any criminal offense under any other law if the offense relates directly or indirectly to a tax, fee, penalty, or charge administered, collected, or enforced by the comptroller.

(b) An investigator commissioned by the comptroller as a peace officer has the powers of a peace officer coextensive with the boundaries of this state.

SECTION 11. Subsection (c), Section 111.006, Tax Code, is amended to read as follows:

(c) The comptroller or the attorney general may:

(1) use information or records made confidential by [~~provisions of~~] this title to enforce:

(A) [~~any provisions of~~] this title; *or*

(B) the criminal laws of this state or the United States; or

(2) [~~may~~] authorize *the* [~~their~~] use *of information or records made confidential by this title* in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party.

SECTION 12. Section 111.061, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The penalties provided by Subsection (b) are intended to be remedial in nature and are provided for the protection of state revenue and to reimburse the state for expenses incurred as a result of fraud, including expenses incurred in conducting an investigation.

SECTION 13. Subsections (a) and (b), Section 111.207, Tax Code, are amended to read as follows:

(a) In determining the expiration date for a period when a tax imposed by this title may be assessed, collected, or refunded, the following periods are not considered:

(1) the period following the date of a tax payment made under protest, but only if a lawsuit is timely filed in accordance with Chapter 112;

(2) the period during which a judicial proceeding is pending in a court of competent jurisdiction to determine the amount of the tax due; [~~and~~]

(3) the period during which an administrative redetermination or refund hearing is pending before the comptroller; *and*

(4) the period during which an indictment or information is pending for a felony offense related to the administration of the Tax Code against any taxpayer or any person personally liable or potentially personally liable for the payment of the tax under Section 111.0611.

(b) The suspension of a period of limitation under Subsection *(a)(1), (2), or (3)* [~~(a)~~] is limited to the issues that were contested under *those subdivisions* [~~Subdivision (1), (2), or (3) of that subsection~~].

SECTION 14. Subsection (a), Section 151.025, Tax Code, is amended to read as follows:

(a) All sellers and all other persons storing, using, or consuming in this state a taxable item purchased from a retailer shall keep the following records in the form the comptroller requires:

(1) records of *all* gross receipts, including documentation in the form of receipts, shipping manifests, invoices, and other pertinent papers, from each *sale*, rental, lease, taxable service, and taxable labor transaction occurring during each reporting period;

(2) records in the form of receipts, shipping manifests, invoices, and other pertinent papers of all purchases of taxable items from every source made during each reporting period; [~~and~~]

(3) records in the form of receipts, shipping manifests, invoices, and other pertinent papers that substantiate each claimed deduction or exclusion authorized by law; *and*

(4) records in the form of sales receipts, invoices, or other equivalent records showing all sales and use tax, and any money represented to be sales and use tax, received or collected on each sale, rental, lease, or service transaction during each reporting period.

SECTION 15. The heading to Section 151.7032, Tax Code, is amended to read as follows:

Sec. 151.7032. FAILURE TO PAY TAXES COLLECTED; CRIMINAL PENALTY *AND AGGREGATION OF AMOUNTS INVOLVED.*

SECTION 16. Section 151.7032, Tax Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An offense under this section is:

(1) a Class C misdemeanor if the amount of the tax collected and not paid is less than *$50* [~~$10,000~~];

(2) a Class B misdemeanor if the amount of the tax collected and not paid is $50 or more but less than $500;

(3) a Class A misdemeanor if the amount of the tax collected and not paid is $500 or more but less than $1,500;

(4) a state jail felony if the amount of the tax collected and not paid is *$1,500* [~~$10,000~~] or more but less than $20,000;

(5) [~~(3)~~] a felony of the third degree if the amount of the tax collected and not paid is $20,000 or more but less than $100,000; [~~and~~]

(6) [~~(4)~~] a felony of the second degree if the amount of the tax collected and not paid is $100,000 or more *but less than $200,000; and*

(7) a felony of the first degree if the amount of the tax collected and not paid is $200,000 or more.

(c) When tax is collected and not paid in violation of Subsection (a) pursuant to one scheme or continuous course of conduct, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

SECTION 17. Subsection (b), Section 151.707, Tax Code, is amended to read as follows:

(b) An offense under Subsection *(a)* [~~(a)(1) or (a)(2) of this section~~] is:

(1) a Class C misdemeanor if the tax avoided by the use of the exemption or resale certificate is less than $20;

(2) a Class B misdemeanor if the tax avoided by the use of the exemption or resale certificate is $20 or more, but less than $200;

(3) a Class A misdemeanor if the tax avoided by the use of the exemption or resale certificate is $200 or more, but less than $750;

(4) a felony of the third degree if the tax avoided by the use of the exemption or resale certificate is $750 or more, but less than $20,000; or

(5) a felony of the second degree if the tax avoided by the use of the exemption or resale certificate is $20,000 or more.

SECTION 18. Subchapter L, Chapter 151, Tax Code, is amended by adding Section 151.7075 to read as follows:

Sec. 151.7075. FAILURE TO PRODUCE CERTAIN RECORDS AFTER USING RESALE CERTIFICATE; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally fails to produce to the comptroller records that document a taxpayer's taxable sale of items that the taxpayer obtained using a resale certificate.

(b) The records to which Subsection (a) applies are records:

(1) required to be kept under Section 151.025; and

(2) requested by the comptroller under Section 151.023 that are not produced in the period required by that section.

(c) The items to which Subsection (a) applies are items the sales of which are required to be reported to the comptroller under Section 151.433, 154.212, or 155.105.

(d) An offense under this section is:

(1) a Class C misdemeanor if the tax avoided by the use of the resale certificate is less than $20;

(2) a Class B misdemeanor if the tax avoided by the use of the resale certificate is $20 or more but less than $200;

(3) a Class A misdemeanor if the tax avoided by the use of the resale certificate is $200 or more but less than $750;

(4) a felony of the third degree if the tax avoided by the use of the resale certificate is $750 or more but less than $20,000; or

(5) a felony of the second degree if the tax avoided by the use of the resale certificate is $20,000 or more.

(e) It is an affirmative defense to prosecution under this section that the items listed for purchase on the resale certificate had not been resold at the time of the comptroller's request for records under Section 151.023.

(f) If conduct described by Subsection (a) is related to one scheme or continuous course of conduct, the conduct may be considered as one offense and the amounts of tax avoided may be aggregated in determining the grade of the offense.

SECTION 19. Section 154.405, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) A forfeiture proceeding under this section is an in rem proceeding.

SECTION 20. Section 154.406, Tax Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The comptroller may sell property forfeited to the state at public or private sale in any commercially reasonable manner *or retain the property for official use by the comptroller's criminal investigation division. Property retained for use under this subsection may later be sold by the comptroller under this section.*

(d) If an automobile or other vehicle seized under Section 154.403 is forfeited and retained by the comptroller under Subsection (a), the comptroller is considered the owner under Subtitle A, Title 7, Transportation Code. The Texas Department of Motor Vehicles shall issue a certificate of title for the vehicle to the comptroller. The comptroller may maintain, repair, use, and operate the vehicle with money appropriated for current operations.

SECTION 21. Subchapter H, Chapter 154, Tax Code, is amended by adding Section 154.407 to read as follows:

Sec. 154.407. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING SEIZED CIGARETTES. (a) The comptroller may photograph cigarettes seized under Section 154.403 before their sale under this subchapter.

(b) In a proceeding arising out of this chapter, including a criminal proceeding, the state is not required to produce the actual cigarettes.

(c) The photographs are admissible in evidence under rules of law governing the admissibility of photographs. The photographs are as admissible in evidence as are the cigarettes themselves.

(d) A person's rights of discovery and inspection of tangible physical evidence are satisfied if the photographs taken under this section are made available to the person by the state on order of any court or other entity having jurisdiction over the proceeding.

SECTION 22. Section 155.145, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) A forfeiture proceeding under this section is an in rem proceeding.

SECTION 23. Section 155.1451, Tax Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The comptroller may sell property forfeited to the state at public or private sale in any commercially reasonable manner *or retain the property for official use by the comptroller's criminal investigation division. Property retained for use under this subsection may later be sold by the comptroller under this section.*

(d) If an automobile or other vehicle seized under Section 155.143 is forfeited and retained by the comptroller under Subsection (a), the comptroller is considered the owner under Subtitle A, Title 7, Transportation Code. The Texas Department of Motor Vehicles shall issue a certificate of title for the vehicle to the comptroller. The comptroller may maintain, repair, use, and operate the vehicle with money appropriated for current operations.

SECTION 24. Subchapter E, Chapter 155, Tax Code, is amended by adding Section 155.146 to read as follows:

Sec. 155.146. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING SEIZED TOBACCO PRODUCTS. (a) The comptroller may photograph tobacco products seized under Section 155.143 before their sale under this subchapter.

(b) In a proceeding arising out of this chapter, including a criminal proceeding, the state is not required to produce the actual tobacco products.

(c) The photographs are admissible in evidence under rules of law governing the admissibility of photographs. The photographs are as admissible in evidence as are the tobacco products themselves.

(d) A person's rights of discovery and inspection of tangible physical evidence are satisfied if the photographs taken under this section are made available to the person by the state on order of any court or other entity having jurisdiction over the proceeding.

SECTION 25. Section 162.401, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The penalties provided by Subsection (b) are intended to be remedial in nature and are provided for the protection of state revenue and to reimburse the state for expenses incurred as a result of fraud, including expenses incurred in conducting an investigation.

SECTION 26. Except as provided by Section 27 of this Act, 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 covered by the law in effect when 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 27. The change in law made by this Act in amending Article 13.13, Code of Criminal Procedure, applies only to a criminal case in which the indictment or information is presented to the court on or after the effective date of this Act. A criminal case in which the indictment or information was presented to the court before the effective date of this Act is governed by the law in effect when the indictment or information was presented, and the former law is continued in effect for that purpose.

SECTION 28. This Act applies only to a seizure of property that occurs on or after the effective date of this Act. A seizure of property that occurs before the effective date of this Act is covered by the law in effect as it existed on the date the seizure occurred, and the former law is continued in effect for that purpose.

SECTION 29. This Act takes effect September 1, 2011.

Passed the Senate on March 31, 2011: Yeas 31, Nays 0; passed the House on May 4, 2011: Yeas 143, Nays 3, two present not voting.

Approved May 17, 2011.

Effective September 1, 2011.

CHAPTER 69

S.B. No. 1086

AN ACT

relating to the operation by the Department of Agriculture of programs for rural economic development and the marketing and promotion of agricultural and other products grown, processed, or produced in this state.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 12.027, Agriculture Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) The department by rule may charge a membership fee to each participant in the program.

APPENDIX 17

Acts of 2011, 82nd Leg., R.S., ch. 91, § 20.003, 2011 Tex. Gen. Laws (448-533)

(S. B. 1303) (eff. Sept. 1, 2011)

(n) In the formula applicable to Texas A&M University—Texarkana for funding instruction and operations, the board shall include any semester credit hours taught through distance education to students enrolled at that university who reside in another state and:

(1) as permitted by Section 54.060(a), pay tuition at the rate charged to residents of this state; and

(2) reside in a county in the other state that is contiguous to the county in which the university is located.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

Passed the Senate on April 14, 2011: Yeas 31, Nays 0; passed the House on May 5, 2011: Yeas 146, Nays 0, one present not voting.

Approved May 19, 2011.

Effective May 19, 2011.

CHAPTER 91

S.B. No. 1303

AN ACT

relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 81st Legislature to other Acts of that legislature.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.001. This Act is enacted as part of the state's continuing statutory revision program under Chapter 323, Government Code. This Act is a revision for purposes of Section 43, Article III, Texas Constitution, and has the purposes of:

(1) codifying without substantive change or providing for other appropriate disposition of various statutes that were omitted from enacted codes;

(2) conforming codifications enacted by the 81st Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;

(3) making necessary corrections to enacted codifications; and

(4) renumbering or otherwise redesignating titles, chapters, and sections of codes that duplicate title, chapter, or section designations.

SECTION 1.002. (a) The repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 82nd Legislature, Regular Session, 2011. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(b) If any provision of this Act conflicts with a statute enacted by the 82nd Legislature, Regular Session, 2011, the statute controls.

SECTION 1.003. (a) A transition or saving provision of a law codified by this Act applies to the codified law to the same extent as it applied to the original law.

(b) The repeal of a transition or saving provision by this Act does not affect the application of the provision to the codified law.

(c) In this section, "transition provision" includes any temporary provision providing for a special situation in the transition period between the existing law and the establishment or implementation of the new law.

ARTICLE 19. CHANGES RELATING TO PARKS AND WILDLIFE CODE

SECTION 19.001. Section 12.302, Parks and Wildlife Code, is amended to correct a reference to read as follows:

Sec. 12.302. VALUE OF FISH, SHELLFISH, REPTILE, AMPHIBIAN, BIRD, OR ANIMAL. For purposes of this subchapter and for determining damages under *Section 7.109* [~~Subsection (b), Section 26.124~~], Water Code, the commission shall adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds, and animals.

SECTION 19.002. Sections 62.013(b) and (c), Parks and Wildlife Code, as amended by Chapters 989 (H.B. 1959) and 1156 (H.B. 3144), Acts of the 79th Legislature, Regular Session, 2005, are reenacted to read as follows:

(b) A person who violates Section 62.003, 62.004, 62.005, 62.0065, 62.011(c), or 350.001 or a rule adopted under Section 62.0065 commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or rule, as appropriate, that the defendant has been convicted one or more times before the trial date of a violation of that section or rule, as appropriate, in which case the offense is a Parks and Wildlife Code state jail felony.

(c) In addition to the punishments provided in Subsections (a) and (b), a person who violates Section 62.003, 62.004, 62.005, 62.0065, 62.011(c), or 350.001 or a rule adopted under Section 62.0065 is punishable by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

ARTICLE 20. CHANGES RELATING TO PENAL CODE

SECTION 20.001. Section 30.05(h), Penal Code, is amended to correct references to read as follows:

(h) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection *(d)(3)(A)(iii)* [~~(d)(1)(C)~~], the defendant may raise the issue as to whether the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly, including an attempt to exercise rights guaranteed by state or federal labor laws. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection *(d)(3)(A)(iii)* [~~(d)(1)(C)~~] does not apply.

SECTION 20.002. Section 46.11(c)(1), Penal Code, is amended to read as follows:

(1) *"Premises" has the meaning* [~~"Institution of higher education" and "premises" have the meanings~~] assigned by Section 481.134, Health and Safety Code.

SECTION 20.003. Section 71.02(a), Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10; [~~or~~]

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15)[~~(14)~~] any offense under Section 42.10; *or*

(16)[~~(14)~~] any offense under Section 46.06(a)(1) or 46.14.

ARTICLE 21. CHANGES RELATING TO PROPERTY CODE

SECTION 21.001. Sections 92.009(a) and (j), Property Code, are amended to conform to the amendments made by Section 1, Chapter 869 (S.B. 1334), Acts of the 74th Legislature, Regular Session, 1995, to read as follows:

(a) If a landlord has locked a tenant out of leased premises in violation of Section *92.0081* [~~92.008~~], the tenant may recover possession of the premises as provided by this section.

(j) This section does not affect a tenant's right to pursue a separate cause of action under Section *92.0081* [~~92.008~~].

SECTION 21.002. Sections 116.005(d) and (e), Property Code, are amended to conform to the amendments made by Section 25, Chapter 148 (H.B. 1190), Acts of the 79th Legislature, Regular Session, 2005, to read as follows:

(d) If Subsection *(c)(4), (5)* [~~(c)(5)~~], (6), *or* (7)[~~, or (8)~~] applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by Subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in *Subsections (c)(1)–(5)* [~~Subsection (c)(1)–(6)~~] or *Subsection (c)(7)* [~~(c)(8)~~] or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

SECTION 21.003. Section 123.005, Property Code, as amended by Chapters 133 (S.B. 918) and 1351 (S.B. 408), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 123.005. BREACH OF FIDUCIARY DUTY: VENUE. Venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust shall be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. To the extent of a conflict between this *section* [~~subsection~~] and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, this *section* [~~subsection~~] controls.

ARTICLE 22. CHANGES RELATING TO SPECIAL DISTRICT LOCAL LAWS CODE

SECTION 22.001. Section 1016.053, Special District Local Laws Code, is amended to more closely reflect the source law from which that section was derived and to conform to Election Code requirements to read as follows:

APPENDIX 18

Acts of 2011, 82nd Leg., R.S., ch. 223, § 3, 2011 Tex. Gen. Laws (799-802)

(H. B. 260) (eff. Sept. 1, 2011)

SECTION 5. The change in law made by this Act to Section 25.01, Penal Code, applies 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 when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 6. The change in law made by this Act 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. The prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 7. The change in law made by this Act to Section 262.1015(b), Family Code, applies only to a petition for a temporary restraining order in a suit by the Department of Family and Protective Services filed on or after the effective date of this Act. A petition filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2011.

Passed by the House on April 15, 2011: Yeas 134, Nays 1, 2 present, not voting; passed by the Senate on May 19, 2011: Yeas 31, Nays 0.

Approved June 17, 2011.

Effective September 1, 2011.

CHAPTER 223

H.B. No. 260

AN ACT

relating to the prosecution and punishment of unlawful transport of a person.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The heading to Chapter 20, Penal Code, is amended to read as follows:

CHAPTER 20. KIDNAPPING, [~~AND~~] UNLAWFUL RESTRAINT, *AND SMUGGLING OF PERSONS*

SECTION 2. Section 20.05, Penal Code, is amended to read as follows:

Sec. 20.05. *SMUGGLING OF PERSONS* [~~UNLAWFUL TRANSPORT~~]. (a) A person commits an offense if the person *intentionally uses a motor vehicle, aircraft, or watercraft to transport an individual with the intent to:*

(1) conceal the individual from a peace officer or special investigator; or

(2) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor [~~for pecuniary benefit transports an individual in a manner that:~~

[~~(1) is designed to conceal the individual from local, state, or federal law enforcement authorities; and~~

[~~(2) creates a substantial likelihood that the individual will suffer serious bodily injury or death~~].

(b) *Except as provided by Subsection (c), an* [~~An~~] offense under this section is a state jail felony.

(c) An offense under this section is a felony of the third degree if the actor commits the offense:

(1) for pecuniary benefit; or

(2) in a manner that creates a substantial likelihood that the transported individual will suffer serious bodily injury or death.

(d) It is an affirmative defense to prosecution under this section that the actor is related to the transported individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

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

SECTION 3. Section 71.02(a), Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10; [~~or~~]

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) [~~(14)~~]any offense under Section 42.10;

(16) [~~(14)~~]any offense under Section 46.06(a)(1) or 46.14; *or*

(17) any offense under Section 20.05.

SECTION 4. Article 13.12, Code of Criminal Procedure, is amended to read as follows:

Art. 13.12. FALSE IMPRISONMENT, [~~AND~~] KIDNAPPING, *AND SMUGGLING OF PERSONS*. Venue for false imprisonment, [~~and~~] kidnapping, *and smuggling of persons* is in either the county in which the offense was committed, or in any county through, into, or out of which the person falsely imprisoned, [~~or~~] kidnapped, *or transported* may have been taken.

SECTION 5. Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code;

(vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(ix) a Class A misdemeanor under Section 306.051, Business & Commerce Code; [~~or~~]

(x) any offense under Section 42.10, Penal Code;

(xi) [~~(x)~~]any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(xii) [~~(x)~~]any offense under Chapter 71, Penal Code; *or*

(xiii) any offense under Section 20.05, Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii), [~~or~~] (x), *(xi), or (xii)* of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii), [~~or~~] (x), *(xi), or (xii)* of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 6. The changes in law made by this Act in amending Sections 20.05 and 71.02, Penal Code, 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 covered by the law in effect when 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 7. The change in law made by this Act in amending Article 59.01(2), Code of Criminal Procedure, applies only to the forfeiture of property in relation to an offense committed on or after the effective date of this Act. Forfeiture of property in relation to an offense committed before the effective date of this Act is governed by the law in effect when 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 8. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. This Act takes effect September 1, 2011.

Passed by the House on April 21, 2011: Yeas 148, Nays 0, 1 present, not voting; the House concurred in Senate amendments to H.B. No. 260 on May 23, 2011: Yeas 143, Nays 0, 2 present, not voting; passed by the Senate, with amendments, on May 19, 2011: Yeas 31, Nays 0.

Approved June 17, 2011.

Effective September 1, 2011.

CHAPTER 224

H.B. No. 265

AN ACT

relating to the lease of space by or for a state agency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2167.002, Government Code, is amended to read as follows:

Sec. 2167.002. PREREQUISITES FOR LEASING SPACE. *(a)* The commission may lease space for a state agency in accordance with this chapter and the agency's specifications if:

(1) state-owned space is not otherwise available to the agency; and

(2) the agency has verified it has money available to pay for the lease.

(b) In making a determination under this section that state-owned space is not available to a state agency, the commission must consider all reasonably available state-owned space in this state, regardless of whether utilizing state-owned space would require the agency to move all or part of the agency's operations to a different geographic location in this state.

SECTION 2. Section 2167.005(a), Government Code, is amended to read as follows:

(a) The commission may delegate to a state agency, including an institution of higher education, the authority to enter into lease contracts for space *if the commission determines that state-owned space is not available as provided by Section 2167.002.*

SECTION 3. This Act takes effect September 1, 2011.

Passed by the House on April 19, 2011: Yeas 139, Nays 0, 2 present, not voting; passed by the Senate on May 19, 2011: Yeas 31, Nays 0.

Approved June 17, 2011.

Effective September 1, 2011.

CHAPTER 225

H.B. No. 268

AN ACT

relating to the exemption from sales and use taxes, including the motor vehicle sales and use tax, for timber and certain items used in or on a farm, ranch, timber operation, or agricultural aircraft operation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter E, Chapter 151, Tax Code, is amended by adding Section 151.1551 to read as follows:

Sec. 151.1551. REGISTRATION NUMBER REQUIRED FOR TIMBER AND CERTAIN AGRICULTURAL ITEMS. (a) This section applies to an exemption provided by:

(1) Sections 151.316(a)(6), (7), (8), (10), (11), and (12);

(2) Section 151.316(b) for tangible personal property used in the production of agricultural products for sale;

APPENDIX 19

Acts of 2011, 82nd Leg., R.S., ch. 620, § 10, 2011 Tex. Gen. Laws (1491-96)

(S. B. 688) (eff. Sept. 1, 2011)

CHAPTER 620

S.B. No. 688

AN ACT

relating to the investigation, prosecution, and punishment of criminal Medicaid fraud and certain other offenses related to Medicaid fraud; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

Art. 12.01. FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these 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) 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) continuous sexual abuse of young child or children under Section 21.02, Penal Code;

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

(F) 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;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(D) injury to an elderly or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code;

(E) sexual assault, except as provided by Subdivision (1); or

(F) arson;

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) securing execution of document by deception;

(C) a felony violation under Chapter 162, Tax Code;

(D) false statement to obtain property or credit under Section 32.32, Penal Code;

(E) money laundering;

(F) credit card or debit card abuse under Section 32.31, Penal Code; [~~or~~]

(G) fraudulent use or possession of identifying information under Section 32.51, Penal Code; *or*

(H) Medicaid fraud under Section 35A.02, Penal Code;

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

(A) theft or robbery;

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

(C) injury to an elderly 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) if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

(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) ten years from the 18th birthday of the victim of the offense:injury to a child under Section 22.04, Penal Code; or

(7) three years from the date of the commission of the offense: all other felonies.

SECTION 2. Subdivision (2), Section 1, Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(2) "Authorized peace officer" means:

(A) a sheriff or a sheriff's deputy;

(B) a constable or deputy constable;

(C) a marshal or police officer of an incorporated city;

(D) a ranger or officer commissioned by the Public Safety Commission or the director of the Department of Public Safety;

(E) an investigator of a prosecutor's office;

(F) a law enforcement agent of the Alcoholic Beverage Commission;

(G) a law enforcement officer commissioned by the Parks and Wildlife Commission; [~~or~~]

(H) an enforcement officer appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code; *or*

(I) an investigator commissioned by the attorney general under Section 402.009, Government Code.

SECTION 3. Subsection (a), Section 3, Article 37.07, Code of Criminal Procedure, is amended by adding Subdivision (3) to read as follows:

(3) Regardless of the plea and whether the punishment is assessed by the judge or the jury, during the punishment phase of the trial of an offense under Section 35A.02, Penal Code, subject to the applicable rules of evidence, the state and the defendant may offer evidence not offered during the guilt or innocence phase of the trial concerning the total pecuniary loss to the Medicaid program caused by the defendant's conduct or, if applicable, the scheme or continuing course of conduct of which the defendant's conduct is part. Subject to the applicable rules of evidence, an employee of the Health and Human Services Commission's office of inspector general or the office of attorney general's Medicaid fraud control unit may testify concerning the total pecuniary loss to the Medicaid program. An employee who testifies under this subdivision is subject to cross-examination. Evidence offered under this subdivision may be considered by the judge or jury in ordering or recommending the amount of any restitution to be made to the Medicaid program or the appropriate punishment for the defendant.

SECTION 4. Subsection (g), Section 531.1021, Government Code, is amended to read as follows:

(g) All information and materials subpoenaed or compiled by the office in connection with an audit or investigation *or by the office of the attorney general in connection with a Medicaid fraud investigation* are confidential and not subject to disclosure under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office or *the attorney general or their* [~~its~~] employees or agents involved in the audit or investigation conducted by the office *or the attorney general*, except that this information may be disclosed to [~~the office of the attorney general,~~]

the state auditor's office, [~~and~~] law enforcement agencies, *and other entities as permitted by other law.*

SECTION 5. Subsections (a-1), (b), (d), (f), and (g), Section 22.04, Penal Code, are amended to read as follows:

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; *or*

(3) bodily injury[~~; or~~

[~~(4) exploitation~~].

(b) An omission that causes a condition described by Subsection (a)(1), (2), or (3) or (a-1)(1), (2), *or* (3)[~~, or (4)~~] is conduct constituting an offense under this section if:

(1) the actor has a legal or statutory duty to act; or

(2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

(d) For purposes of an omission that causes a condition described by Subsection (a)(1), (2), or (3), the actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), *or* (3), [~~or (4),~~] the actor acting during the actor's capacity as owner, operator, or employee of a group home or facility described by Subsection (a-1) is considered to have accepted responsibility for protection, food, shelter, and medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.

(f) An offense under Subsection (a)(3) or (a-1)(3) [~~or (4)~~] is a felony of the third degree when the conduct is committed intentionally or knowingly, except that an offense under Subsection (a)(3) is a felony of the second degree when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a center, as defined by Section 555.001, Health and Safety Code, or in a facility licensed under Chapter 252, Health and Safety Code, and the actor is an employee of the center or facility whose employment involved providing direct care for the victim. When the conduct is engaged in recklessly, the offense is a state jail felony.

(g) An offense under Subsection (a) is a state jail felony when the person acts with criminal negligence. An offense under Subsection (a-1) is a state jail felony when the person, with criminal negligence and by omission, causes a condition described by Subsection (a-1)(1), (2), *or* (3)[~~, or (4)~~].

SECTION 6. Subsection (d), Section 32.46, Penal Code, is amended to read as follows:

(d) In this section:

(1) "Deception"[~~, "deception"~~] has the meaning assigned by Section 31.01.

(2)"Document" includes electronically stored data or other information that is retrievable in a readable, perceivable form.

SECTION 7. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.53 to read as follows:

Sec. 32.53. EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Child," "elderly individual," and "disabled individual" have the meanings assigned by Section 22.04.

(2)"Exploitation" means the illegal or improper use of a child, elderly individual, or disabled individual or of the resources of a child, elderly individual, or disabled individual for monetary or personal benefit, profit, or gain.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly causes the exploitation of a child, elderly individual, or disabled individual.

(c) An offense under this section is a felony of the third degree.

(d) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the Medicaid program.

SECTION 8. Section 35A.01, Penal Code, is amended by adding Subdivision (10) to read as follows:

(10) "High managerial agent" means a director, officer, or employee who is authorized to act on behalf of a provider and has duties of such responsibility that the conduct of the director, officer, or employee reasonably may be assumed to represent the policy or intent of the provider.

SECTION 9. Section 35A.02, Penal Code, is amended by amending Subsections (b) and (c) and adding Subsections (e) and (f) to read as follows:

(b) An offense under this section is:

(1) a Class C misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is less than $50;

(2) a Class B misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is $50 or more but less than $500;

(3) a Class A misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is $500 or more but less than $1,500;

(4) a state jail felony if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is $1,500 or more but less than $20,000;

(B) the offense is committed under Subsection (a)(11); or

(C) it is shown on the trial of the offense that the amount of the payment or value of the benefit described by this subsection cannot be reasonably ascertained;

(5) a felony of the third degree if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is $20,000 or more but less than $100,000; *or*

(B) it is shown on the trial of the offense that the defendant submitted more than 25 but fewer than 50 fraudulent claims under the Medicaid program and the submission of each claim constitutes conduct prohibited by Subsection (a);

(6) a felony of the second degree if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is $100,000 or more but less than $200,000; or

(B) it is shown on the trial of the offense that the defendant submitted 50 or more fraudulent claims under the Medicaid program and the submission of each claim constitutes conduct prohibited by Subsection (a); or

(7) a felony of the first degree if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is $200,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code or another provision of law, the actor may be prosecuted under either this section or the other section or provision *or both this section and the other section or provision.*

(e) The punishment prescribed for an offense under this section, other than the punishment prescribed by Subsection (b)(7), is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor was a provider or high managerial agent at the time of the offense.

(f) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the Medicaid program.

SECTION 10. Subsection (a), Section 71.02, Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, [~~or~~] 35, *or 35A*;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10; [~~or~~]

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) [~~(14)~~]any offense under Section 42.10; *or*

(16) [~~(14)~~]any offense under Section 46.06(a)(1) or 46.14.

SECTION 11. Subdivision (4), Subsection (c), Section 22.04, Penal Code, is repealed.

SECTION 12. (a) The changes in law made by this Act to Article 37.07, Code of Criminal Procedure, and Sections 22.04, 32.46, 35A.01, 35A.02, and 71.02, Penal Code, 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 covered by the law in effect when 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.

(b) The change in law made by this Act in amending 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. The prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 13. This Act takes effect September 1, 2011.

Passed the Senate on April 11, 2011: Yeas 31, Nays 0; passed the House on May 18, 2011: Yeas 129, Nays 0, two present not voting.

Approved June 17, 2011.

Effective September 1, 2011.

CHAPTER 621

S.B. No. 710

AN ACT

relating to the disclosure of a hazardous drain in a swimming pool or spa by a seller of residential real property.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 5.008, Property Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) The notice must be executed and must, at a minimum, read substantially similar to the following:

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT _____
(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller __ is __ is not occupying the Property.

If unoccupied, how long since Seller has occupied the Property?

---

1. The Property has the items checked below:

Write Yes (Y), No (N), or Unknown (U).

__ Range
__ Dishwasher
__ Washer/Dryer Hookups
__ Security System
__ Oven
__ Trash Compactor
__ Window Screens
__ Fire Detection Equipment
__ Smoke Detector
__ Smoke Detector – Hearing Impaired
__ Carbon Monoxide Alarm
__ Microwave
__ Disposal
__ Rain Gutters
__ Intercom System

APPENDIX 20

Acts of 2011, 82nd Leg., R.S., ch. 1200, §§ 3, 4 2011 Tex. Gen. Laws (3195-97)

(S. B. 158) (eff. Sept. 1, 2011)

former patient is injured as described by Section 81.002 and the employer or former employer:

(1) knows of the occurrence of [~~the~~] sexual exploitation by the mental health services provider of *a* [~~the~~] patient or former patient;

(2) receives a specific request by an employer or prospective employer of the mental health services provider, engaged in the business of providing mental health services, concerning the possible existence or nature of sexual exploitation by the mental health services provider; and

(3) fails to disclose the occurrence of the sexual exploitation.

SECTION 2. The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect on the date the cause of action accrues, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

Passed the Senate on March 17, 2011: Yeas 31, Nays 0; passed the House on May 23, 2011: Yeas 142, Nays 0, one present not voting.

Approved June 17, 2011.

Effective June 17, 2011.

CHAPTER 1200

S.B. No. 158

AN ACT

relating to offenses involving the fraudulent or unlawful obtaining, delivering, dispensing, distributing, or diverting of a controlled substance; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1285 to read as follows:

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

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

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment; or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 2. Section 481.129, Health and Safety Code, is amended by adding Subsections (a-1) and (d-1) to read as follows:

(a-1) A person commits an offense if the person, with intent to obtain a controlled substance or combination of controlled substances that is not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtains or attempts to obtain from a practitioner a controlled substance or a

prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subsection, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner.

(d-1) An offense under Subsection (a-1) is:

(1) a felony of the second degree if any controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if any controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if any controlled substance that is the subject of the offense is listed in Schedule V.

SECTION 3. Subsection (a), Section 71.02, Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10; [~~or~~]

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11*;*

(15) [~~(14)~~]any offense under Section 42.10*; or*

(16) [~~(14)~~]any offense under Section 46.06(a)(1) or 46.14.

SECTION 4. Subsections (b) and (c), Section 71.02, Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, are reenacted to read as follows:

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony,

except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

SECTION 5. Subsection (a), Section 71.05, Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, is reenacted and amended to read as follows:

(a) It is an affirmative defense to prosecution under Section 71.02 that under circumstances manifesting a voluntary and complete renunciation of *the actor's* [~~his~~] criminal objective, the actor withdrew from the combination before commission of an offense listed in [~~Subsection (a) of~~] Section *71.02(a)* [~~71.02~~] and took further affirmative action that prevented the commission of the offense.

SECTION 6. Subsection (c), Section 71.05, Penal Code, is amended to read as follows:

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in [~~Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of~~] Section *71.02(a)* [~~71.02 of this code~~] and made substantial effort to prevent the commission of an offense listed in [~~Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of~~] Section *71.02(a)* [~~71.02 of this code~~] shall be admissible as mitigation at the hearing on punishment if *the actor* [~~he~~] has been found guilty under Section 71.02 [~~of this code~~], and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 [~~of this code~~].

SECTION 7. The change in law made by this Act applies 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 covered by the law in effect when 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 8. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. This Act takes effect September 1, 2011.

Passed the Senate on March 30, 2011: Yeas 31, Nays 0; May 26, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2011, House granted request of the Senate; May 28, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0; passed the House, with amendments, on May 25, 2011: Yeas 145, Nays 2, two present not voting; May 27, 2011, House granted request of the Senate for appointment of Conference Committee; May 29, 2011, House adopted Conference Committee Report by the following vote: Yeas 146, Nays 2, one present not voting.

Approved June 17, 2011.

Effective September 1, 2011.

CHAPTER 1201

S.B. No. 166

AN ACT

relating to the sex offender civil commitment program and to the creation of a state agency to perform the functions relating to the sex offender civil commitment program that are currently performed by the Council on Sex Offender Treatment.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1389 to read as follows:

APPENDIX 21

Acts of 2013, 83rd Leg., R.S., ch. 161, §16.005 2013 Tex. Gen. Laws (622-710)

(S. B. 1093) (eff. Sept. 1, 2013)

SECTION 85. Subsection (a), Section 180.056, Finance Code, is amended to read as follows:

(a) An applicant for a residential mortgage loan originator license must complete education courses that include[~~, at a minimum,~~] at least the minimum number of hours and type of courses required by the S.A.F.E. Mortgage Licensing Act and the minimum number of hours of training related to lending standards for the nontraditional mortgage product marketplace required by that Act *and any additional requirements established by the regulatory official and adopted by rule of the rulemaking authority.*

SECTION 86. Subsection (a), Section 180.251, Finance Code, is amended to read as follows:

(a) *The* [~~Except as provided by Subsection (b), the~~] savings and mortgage lending commissioner shall administer and enforce this chapter with respect to individuals licensed under Chapter [~~156 or~~] 157.

SECTION 87. The following provisions of the Finance Code are repealed:

(1) Section 15.4024;

(2) Sections 156.2015, 156.205, and 156.405;

(3) Subsections (a-1) and (a-2), Section 156.101;

(4) Subsections (b), (b-1), and (b-2), Section 156.201;

(5) Subsection (b), Section 156.102, Subsection (c), Section 156.202, Subsection (c), Section 156.203, Subsection (b), Section 156.2041, Subsection (b), Section 156.2042, Subsection (b), Section 156.2043, Subsection (c), Section 156.2044, Section 156.2045, Subsection (a), Section 156.206, Subsections (b), (c), and (d), Section 156.207, and Subsection (c), Section 156.2081;

(6) Subsections (b-1), (b-2), and (j), Section 156.208;

(7) Subsection (f), Section 157.003, Finance Code, as added by Chapter 655 (Senate Bill No. 1124), Acts of the 82nd Legislature, Regular Session, 2011;

(8) Subsection (d), Section 157.012, and Subsection (b), Section 157.015; and

(9) Subsection (b), Section 180.251.

SECTION 88. The changes in law made by this Act do not affect any pending proceeding or action brought under Subchapter D, Chapter 156, Finance Code, as that subchapter existed immediately before amendment by this Act, and the former law is continued in effect for that purpose.

SECTION 89. The changes in law made by this Act apply only to a license or registration issued or renewed on or after the effective date of this Act. A license or registration issued or renewed before the effective date of this Act is governed by the law in effect on the date the license or registration was issued or renewed, and the former law is continued in effect for that purpose.

SECTION 90. This Act takes effect September 1, 2013.

Passed the Senate on April 18, 2013: Yeas 31, Nays 0; passed the House on May 8, 2013: Yeas 146, Nays 1, two present not voting.

Approved May 24, 2013.

Effective September 1, 2013.

CHAPTER 161

S.B. No. 1093

AN ACT

relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 82nd Legislature to other Acts of that legislature.

become final, on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under this subsection.

SECTION 16.003. Section 12.42(f), Penal Code, is amended to conform to the repeal of Section 12.42(e), Penal Code, by Chapter 834 (H.B. 3384), Acts of the 82nd Legislature, Regular Session, 2011, and to correct a reference to read as follows:

(f) For the purposes of Subsections (a), (b), *and* (c)(1), [~~and (e),~~] an adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to the Texas *Juvenile Justice Department* [~~Youth Commission~~] under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, is a final felony conviction.

SECTION 16.004. Section 37.01(2), Penal Code, is amended to correct a reference to read as follows:

(2) "Governmental record" means:

(A) anything belonging to, received by, or kept by government for information, including a court record;

(B) anything required by law to be kept by others for information of government;

(C) a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States;

(D) a standard proof of motor vehicle liability insurance form described by Section 601.081, Transportation Code, a certificate of an insurance company described by Section 601.083 of that code, a document purporting to be such a form or certificate that is not issued by an insurer authorized to write motor vehicle liability insurance in this state, an electronic submission in a form described by Section *502.046(i)* [~~502.153(i)~~], Transportation Code, or an evidence of financial responsibility described by Section 601.053 of that code;

(E) an official ballot or other election record; or

(F) the written documentation a mobile food unit is required to obtain under Section 437.0074, Health and Safety Code.

SECTION 16.005. Section 71.02(a), Penal Code, as amended by Chapters 68 (S.B. 934) and 223 (H.B. 260), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14; [~~or~~]

(17) any offense under Section 20.05; *or*

(18) [~~(17)~~] any offense classified as a felony under the Tax Code.

ARTICLE 17. CHANGES RELATING TO PROPERTY CODE

SECTION 17.001. Section 51.002(i), Property Code, as added by Chapters 252 (H.B. 1127) and 592 (S.B. 101), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted to read as follows:

(i) Notice served on a debtor under this section must state the name and address of the sender of the notice and contain, in addition to any other statements required under this section, a statement that is conspicuous, printed in boldface or underlined type, and substantially similar to the following: "Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."

SECTION 17.002. (a) Section 209.003(e), Property Code, as added by Chapters 1142 (H.B. 1821) and 1282 (H.B. 1228), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted to conform to Section 209.003(e), Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011, and Section 209.003(e), Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011, to read as follows:

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

(1) Section 209.005(c);

(2) Section 209.0056;

(3) Section 209.0057;

(4) Section 209.0058;

(5) Section 209.00592; and

(6) Section 209.0062.

(b) Section 209.003(e), Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011, and Section 209.003(e), Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011, are repealed.

SECTION 17.003. Sections 209.0058, 209.0059, 209.00592, and 209.00593, Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011, are repealed as duplicative of Sections 209.0058, 209.0059, 209.00591, and 209.00592, Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011.

APPENDIX 22

Acts of 2013, 83rd Leg., R.S., ch. 1252, § 21, 2013 Tex. Gen. Laws (3167-72)

(H. B. 8) (eff. Sept. 1, 2013)

CHAPTER 1252

H.B. No. 8

AN ACT

relating to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The heading to Chapter 7A, Code of Criminal Procedure, is amended to read as follows:

CHAPTER 7A. PROTECTIVE ORDER FOR [~~CERTAIN~~] VICTIMS OF [~~TRAFFICKING OR~~] SEXUAL ASSAULT OR *ABUSE,* STALKING, *OR TRAFFICKING*

SECTION 2. Article 7A.01(a), Code of Criminal Procedure, as amended by Chapters 1 (S.B. 24) and 135 (S.B. 250), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

(a) The following persons may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code;

(2) a person who is the victim of an offense under Section *20A.02* [~~20A.02(a)(3), (4), (7), or (8)~~] or [~~Section~~] 43.05, Penal Code;

(3) a parent or guardian acting on behalf of a person younger than *17* [~~18~~] years of age who is the victim of an offense listed in Subdivision (1);

(4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision [~~or~~] (2); or

(5) [~~(4)~~] a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).

SECTION 3. Article 7A.02, Code of Criminal Procedure, is amended to read as follows:

Art. 7A.02. TEMPORARY EX PARTE ORDER. If the court finds from the information contained in an application for a protective order that there is a clear and present danger of sexual assault *or abuse,* stalking, *trafficking,* or other harm to the applicant, the court, without further notice to the alleged offender and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

SECTION 4. Article 7A.03, Code of Criminal Procedure, as amended by Chapters 135 (S.B. 250) and 238 (H.B. 649), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER. (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault *or abuse,*[~~; or~~] stalking, *or trafficking.*

(b) If the court makes a finding described by Subsection *(a)* [~~(a)(1) or (2)~~], the court shall issue a protective order that includes a statement of the required findings.

SECTION 5. Article 7A.07(b), Code of Criminal Procedure, is amended to read as follows:

(b) *The following persons may file at any time an application with the court to rescind the protective order:*

(1) a victim of an offense listed in Article 7A.01(a)(1) [~~A victim~~] who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age; *or*

(2) a victim of an offense listed in Article 7A.01(a)(2) or a parent or guardian acting on behalf of a victim who is younger than 18 years of age [~~may file at any time an application with the court to rescind the protective order~~].

SECTION 6. Section 4(d), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(d) A defendant is not eligible for community supervision under this section 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 Section 15(a);

(3) does not file a sworn motion under Subsection (e) of this section or for whom the jury does not enter in the verdict a finding that the information contained in the motion is true;

(4) 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 one of those subsections;

(5) is convicted of an offense listed in Section 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(6) is convicted of an offense listed in Section 3g(a)(1)(D), if the victim of the offense was younger than 14 years of age at the time the offense was committed and the actor committed the offense with the intent to violate or abuse the victim sexually;

(7) is convicted of an offense listed in Section 3g(a)(1)(J), *(L), or (M)*; or

(8) is adjudged guilty of an offense under Section 19.02, Penal Code.

SECTION 7. Chapter 48, Code of Criminal Procedure, is amended by adding Article 48.06 to read as follows:

Art. 48.06. EDUCATIONAL MATERIALS CONCERNING PARDONS FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS. (a) The Board of Pardons and Paroles shall develop educational materials specifically for persons convicted of or placed on deferred adjudication community supervision for an offense the person committed solely as a victim of trafficking of persons under Section 20A.02, Penal Code. The board shall include in the educational materials a detailed description of the process by which the person may submit a request to the board for a written signed recommendation advising the governor to grant the person a pardon.

(b) The Board of Pardons and Paroles shall post educational materials described by Subsection (a) on the board's Internet website.

SECTION 8. Article 56.32(a), Code of Criminal Procedure, is amended by adding Subdivision (14) to read as follows:

(14) "Trafficking of persons" means any offense that results in a person engaging in forced labor or services and that may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26, Penal Code.

SECTION 9. Article 56.42(d), Code of Criminal Procedure, is amended to read as follows:

(d) A victim who is a victim of family violence, *a victim of trafficking of persons,* or a victim of sexual assault who is assaulted in the victim's place of residence may receive a onetime-only assistance payment in an amount not to exceed:

(1) $2,000 to be used for relocation expenses, including expenses for rental deposit, utility connections, expenses relating to the moving of belongings, motor vehicle mileage expenses, and for out-of-state moves, transportation, lodging, and meals; and

(2) $1,800 to be used for housing rental expenses.

SECTION 10. Article 56.81, Code of Criminal Procedure, is amended by adding Subdivision (7) to read as follows:

(7) "Trafficking of persons" means any offense that may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26, Penal Code, and that results in a person:

(A) engaging in forced labor or services; or

(B) otherwise becoming a victim of the offense.

SECTION 11. Article 56.82(a), Code of Criminal Procedure, is amended to read as follows:

(a) The attorney general shall establish an address confidentiality program, as provided by this subchapter, to assist a victim of family violence, *trafficking of persons*, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code, in maintaining a confidential address.

SECTION 12. Articles 56.83(a), (b), and (e), Code of Criminal Procedure, are amended to read as follows:

(a) To be eligible to participate in the program, an applicant must:

(1) meet with a victim's assistance counselor from a state or local agency or other entity, whether for-profit or nonprofit that is identified by the attorney general as an entity that provides counseling and shelter services to victims of family violence, *trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code*;

(2) file an application for participation with the attorney general or a state or local agency or other entity identified by the attorney general under Subdivision (1);

(3) designate the attorney general as agent to receive service of process and mail on behalf of the applicant; and

(4) live at a residential address, or relocate to a residential address, that is unknown to the person who committed or is alleged to have committed the family violence, *trafficking of persons*, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code.

(b) An application under Subsection (a)(2) must contain:

(1) a signed, sworn statement by the applicant stating that the applicant fears for the safety of the applicant, the applicant's child, or another person in the applicant's household because of a threat of immediate or future harm caused by the person who committed or is alleged to have committed the family violence, *the trafficking of persons*, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code;

(2) the applicant's true residential address and, if applicable, the applicant's business and school addresses; and

(3) a statement by the applicant of whether there is an existing court order or a pending court case for child support or child custody or visitation that involves the applicant and, if so, the name and address of:

(A) the legal counsel of record; and

(B) each parent involved in the court order or pending case.

(e) The attorney general by rule may establish additional eligibility requirements for participation in the program that are consistent with the purpose of the program as stated in Article 56.82(a). The attorney general may establish procedures for requiring an applicant, in appropriate circumstances, to submit with the application under Subsection (a)(2) independent documentary evidence of family violence, *trafficking of persons*, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code, in the form of:

(1) an active or recently issued protective order;

(2) an incident report or other record maintained by a law enforcement agency or official;

(3) a statement of a physician or other health care provider regarding the applicant's medical condition as a result of the family violence, *trafficking of persons*, or offense; or

(4) a statement of a mental health professional, a member of the clergy, an attorney or other legal advocate, a trained staff member of a family violence center, or another professional who has assisted the applicant in addressing the effects of the family violence, *trafficking of persons*, or offense.

SECTION 13. Section 508.145(d)(1), Government Code, is amended to read as follows:

(1) An inmate serving a sentence for an offense described by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), [~~or~~] (K), *(L), or (M)*, Article 42.12, Code of Criminal

Procedure, [~~or for~~] an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) of that article, or [~~for~~] an offense under Section 20A.03, 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 in no event is the inmate eligible for release on parole in less than two calendar years.

SECTION 14. The heading to Section 38.112, Penal Code, is amended to read as follows:

Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS OF SEXUAL ASSAULT *OR ABUSE, STALKING, OR TRAFFICKING.*

SECTION 15. Section 43.02, Penal Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e) to read as follows:

(a) A person commits an offense if *the person* [~~he~~] knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

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

(b) An offense is established under Subsection (a)(1) whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) whether the actor solicits a person to hire *the actor* [~~him~~] or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under this section;

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under this section; *or*

(3) [~~a felony of the third degree if the person solicited is 14 years of age or older and younger than 18 years of age; or~~

[~~(4)~~] a felony of the second degree if the person solicited is younger than *18* [~~14~~] years of age, *regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense.*

(e) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D, Chapter 12. For purposes of enhancement of penalties under this section or Subchapter D, Chapter 12, a defendant is previously convicted of an offense under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

SECTION 16. Section 43.03(b), Penal Code, is amended to read as follows:

(b) An offense under this section is a Class A misdemeanor, *except that the offense is:*

(1) a state jail felony if the actor has been previously convicted of an offense under this section; or

(2) a felony of the second degree if the actor engages in conduct described by Subsection (a)(1) or (2) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time the actor commits the offense.

SECTION 17. Section 43.04(b), Penal Code, is amended to read as follows:

(b) An offense under this section is a felony of the third degree, *except that the offense is a felony of the first degree if the prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age, regardless of whether the actor knows the age of the person at the time the actor commits the offense.*

SECTION 18. Section 43.251(c), Penal Code, as amended by Chapters 515 (H.B. 2014) and 938 (H.B. 290), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

(c) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the child is younger than 14 years of age at the time the offense is committed.

[~~(1) a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted one time of an offense under this section; and~~

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

SECTION 19. Section 43.23(h), Penal Code, is amended to read as follows:

(h) The punishment for an offense under Subsection (a) *or* [~~is increased to the punishment for a felony of the third degree and the punishment for an offense under Subsection~~] (c) is increased to the punishment for a [~~state jail~~] felony *of the second degree* if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by:

(1) a child younger than 18 years of age at the time the image of the child was made;

(2) an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or

(3) an image created, adapted, or modified to be the image of an identifiable child.

SECTION 20. Sections 43.26(a) and (h), Penal Code, are amended to read as follows:

(a) A person commits an offense if:

(1) the person knowingly or intentionally possesses, *or knowingly or intentionally accesses with intent to view,* visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, *including a child who engages in sexual conduct as a victim of an offense under Section 20A.02(a)(5), (6), (7), or (8)*; and

(2) the person knows that the material depicts the child as described by Subdivision (1).

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:

(1) possessed *or accessed* the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;

(2) allowed other law enforcement or school administrative personnel to *possess or* access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

SECTION 21. Section 71.02(a), Penal Code, as amended by Chapters 68 (S.B. 934) and 223 (H.B. 260), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, *continuous sexual abuse of young child or children, solicitation of a minor,* forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14; [~~or~~]

(17) any offense under Section 20.05; *or*

(18) [~~(17)~~] any offense classified as a felony under the Tax Code.

SECTION 22. Chapter 7B, Code of Criminal Procedure, is repealed.

SECTION 23. (a) The changes in law made by this Act in amending Chapter 7A, Code of Criminal Procedure, and repealing Chapter 7B, Code of Criminal Procedure, apply only to a protective order issued on or after the effective date of this Act. A protective order issued before the effective date of this Act is governed by the law in effect on the date the order is issued, and the former law is continued in effect for that purpose.

(b) 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 subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 24. The Board of Pardons and Paroles not later than October 1, 2013, shall post on its Internet website the educational materials described by Article 48.06(a), Code of Criminal Procedure, as added by this Act.

SECTION 25. The change in law made by this Act to Section 43.26, Penal Code, applies 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 26. This Act takes effect September 1, 2013.

Passed by the House on April 17, 2013: Yeas 147, Nays 0, 1 present, not voting; the House concurred in Senate amendments to H.B. No. 8 on May 23, 2013: Yeas 146, Nays 0, 2 present, not voting; passed by the Senate, with amendments, on May 21, 2013: Yeas 31, Nays 0.

Approved June 14, 2013.

Effective September 1, 2013.

APPENDIX 23

Acts of 2015, 84th Leg., R.S., ch. 333, § 16 2015 Tex. Gen. Laws (1508-17)

(H. B. 11) (eff. Sept. 1, 2015)

fense 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 18. (a) Not later than December 1, 2015, the Supreme Court of Texas shall adopt the rules necessary to provide the training required under Section 22.011, Government Code, as amended by this Act.

(b) Not later than December 1, 2015, the Texas Court of Criminal Appeals shall adopt the rules necessary to provide the training required under Section 22.110, Government Code, as amended by this Act.

(c) Notwithstanding Section 22.110, Government Code, as amended by this Act, a judge, master, referee, and magistrate who is in office on the effective date of this Act must complete the training required by Section 22.110, Government Code, as amended by this Act, as applicable, not later than December 1, 2017.

SECTION 19. The change in law made by this Act in adding Section 20A.04, Penal Code, applies to a criminal proceeding that commences on or after the effective date of this Act. A criminal proceeding that commences before the effective date of this Act is covered by the law in effect when the proceeding commenced, and the former law is continued in effect for that purpose.

SECTION 20. This Act takes effect September 1, 2015.

Passed by the House on March 17, 2015: Yeas 145, Nays 0, 1 present, not voting; the House concurred in Senate amendments to H.B. No. 10 on May 26, 2015: Yeas 146, Nays 0, 2 present, not voting; passed by the Senate, with amendments, on May 22, 2015: Yeas 31, Nays 0.

Approved June 9, 2015.

Effective September 1, 2015.

POWERS AND DUTIES OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY, MILITARY AND LAW ENFORCEMENT TRAINING, AND THE INVESTIGATION, PROSECUTION, PUNISHMENT, AND PREVENTION OF CERTAIN OFFENSES; CREATING AN OFFENSE AND INCREASING A CRIMINAL PENALTY; AUTHORIZING FEES

CHAPTER 333

H.B. No. 11

AN ACT

relating to the powers and duties of the Texas Department of Public Safety, military and law enforcement training, and the investigation, prosecution, punishment, and prevention of certain offenses; creating an offense and increasing a criminal penalty; authorizing fees.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 2.12, Code of Criminal Procedure, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(4) rangers, [~~and~~] officers, *and members of the reserve officer corps* commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than 1.18 million located primarily in a county with a population of 2 million or more that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;

(17) investigators commissioned by the Texas Medical Board;

(18) officers commissioned by:

(A) the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, the Bexar County Hospital District, or the El Paso County Hospital District under Section 281.057, Health and Safety Code;

(B) the board of directors of the Ector County Hospital District under Section 1024.117, Special District Local Laws Code; and

(C) the board of directors of the Midland County Hospital District of Midland County, Texas, under Section 1061.121, Special District Local Laws Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) [~~an officer employed by the Department of State Health Services under Section 431.2471, Health and Safety Code;~~

[~~(26)~~] officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(26) [~~(27)~~] officers commissioned by the state fire marshal under Chapter 417, Government Code;

(27) [~~(28)~~] an investigator commissioned by the commissioner of insurance under Section 701.104, Insurance Code;

(28) [~~(29)~~] apprehension specialists and inspectors general commissioned by the Texas Juvenile Justice Department as officers under Sections 242.102 and 243.052, Human Resources Code;

(29) [~~(30)~~] officers appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code;

(30) [~~(31)~~] investigators commissioned by the Texas Commission on Law Enforcement under Section 1701.160, Occupations Code;

(31) [~~(32)~~] commission investigators commissioned by the Texas Private Security Board under Section *1702.061* [~~1702.061(f)~~], Occupations Code;

(32) [~~(33)~~] the fire marshal and any officers, inspectors, or investigators commissioned by an emergency services district under Chapter 775, Health and Safety Code;

(33) [~~(34)~~] officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section;

(34) [~~(35)~~] investigators commissioned by the Texas Juvenile Justice Department as officers under Section 221.011, Human Resources Code; and

(35) [~~(36)~~] the fire marshal and any related officers, inspectors, or investigators commissioned by a county under Subchapter B, Chapter 352, Local Government Code.

SECTION 2. Section 4, Article 18.20, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED. A judge of competent jurisdiction may issue an order authorizing interception of wire, oral, or electronic communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of:

(1) a felony under Section 19.02, 19.03, or 43.26, Penal Code;

(2) a felony under:

(A) Chapter 481, Health and Safety Code, other than felony possession of marihuana;

(B) Section 485.032, Health and Safety Code; or

(C) Chapter 483, Health and Safety Code;

(3) an offense under Section 20.03 or 20.04, Penal Code;

(4) an offense under Chapter 20A, Penal Code;

(5) an offense under Chapter 34, Penal Code, if the criminal activity giving rise to the proceeds involves the commission of an offense under Title 5, Penal Code, or an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense under Title 5;

(6) an offense under Section 38.11, Penal Code; [~~or~~]

(7) *an offense under Section 43.04 or 43.05, Penal Code; or*

(8) an attempt, conspiracy, or solicitation to commit an offense listed in this section.

SECTION 3. Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 427 (S.B. 529) and 1357 (S.B. 1451), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, *20.06,* 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581–1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 151, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(vii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(viii) a Class A misdemeanor under Section 306.051, Business & Commerce Code;

(ix) any offense under Section 42.10, Penal Code;

(x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(xi) any offense under Chapter 71, Penal Code;

(xii) any offense under Section 20.05 *or 20.06,* Penal Code; or

(xiii) [~~(xiv)~~] an offense under Section 326.002, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code; or

(F) used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or Chapter 43, Penal Code.

SECTION 4. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.038 to read as follows:

Sec. 402.038. TRANSNATIONAL AND ORGANIZED CRIME DIVISION. (a) The office of the attorney general shall establish a transnational and organized crime division.

(b) To address matters related to border security and organized crime, the transnational and organized crime division shall:

(1) establish within the division a prosecution unit to provide critical assistance to local prosecutors;

(2) using existing funds, establish within the division a trafficking of persons unit to:

(A) assist local law enforcement agencies and local prosecutors in investigating and prosecuting trafficking of persons and related crimes; and

(B) work with the appropriate local and state agencies to identify victims of traf-

ficking of persons and to provide the types of assistance available for those victims under Chapter 56, Code of Criminal Procedure; and

(3) develop initiatives to provide greater state assistance, support, and coordination among state law enforcement agencies, local law enforcement agencies, and local prosecutors.

(c) Prosecution assistance provided by the division under this section shall be in accordance with the assistance authorized under Section 402.028.

SECTION 5. Section 411.0043, Government Code, is amended to read as follows:

Sec. 411.0043. TECHNOLOGY POLICY; *REVIEW. (a)* The commission shall implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions. The policy must ensure that the public is able to interact with the department on the Internet.

(b) The department shall periodically:

(1) review the department's existing information technology system to determine whether:

(A) the system's security should be upgraded; and

(B) the system provides the department with the best ability to monitor and investigate criminal activity on the Internet; and

(2) make any necessary improvements to the department's information technology system.

SECTION 6. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0163 to read as follows:

Sec. 411.0163. HIRING OFFICERS WITH PREVIOUS LAW ENFORCEMENT EXPERIENCE. Notwithstanding any other provision of law, the department may, at the time a commissioned officer is hired, elect to credit up to four years of experience as a peace officer in the state as years of service for the purpose of calculating the officer's salary under Schedule C. All officers are subject to the one-year probationary period under Section 411.007(g) notwithstanding the officer's rank or salary classification.

SECTION 7. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0164 to read as follows:

Sec. 411.0164. 50-HOUR WORKWEEK FOR COMMISSIONED OFFICERS. Notwithstanding any other law, the department may implement a 10-hour workday and 50-hour workweek for commissioned officers of the department.

SECTION 8. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0165 to read as follows:

Sec. 411.0165. VETERAN APPLICANTS FOR TROOPER TRAINING. The department may accept a person applying to the department's trooper trainee academy if the person:

(1) has served four or more years in the United States armed forces as a member of the military police or other security force and received an honorable discharge; and

(2) meets all other department requirements for a commissioned officer.

SECTION 9. Subchapter A, Chapter 411, Government Code, is amended by adding Sections 411.0208 and 411.0209 to read as follows:

Sec. 411.0208. RESERVE OFFICER CORPS. (a) The commission may provide for the establishment of a reserve officer corps consisting of retired or previously commissioned officers of the department who retired or resigned in good standing.

(b) The commission shall establish qualifications and standards of training for members of the reserve officer corps.

(c) The commission may limit the size of the reserve officer corps.

(d) The director shall appoint the members of the reserve officer corps. Members serve at the director's discretion.

(e) The director may call the reserve officer corps into service at any time the director considers it necessary to have additional officers to assist the department in conducting background investigations, sex offender compliance checks, and other duties as determined necessary by the director.

Sec. 411.0209. DEPARTMENT ASSISTANCE AT INTERNATIONAL BORDER CHECKPOINTS. (a) To prevent the unlawful transfer of contraband from this state to the United Mexican States and other unlawful activity, the department shall implement a strategy for providing to federal authorities and to local law enforcement authorities working with those federal authorities at international border checkpoints assistance in the interdiction of weapons, bulk currency, stolen vehicles, and other contraband, and of fugitives, being smuggled into the United Mexican States.

(b) The department may share with the federal government the cost of staffing any international border checkpoints for the purposes described by this section.

(c) The director and applicable local law enforcement authorities shall adopt procedures as necessary to administer this section.

SECTION 10. Subchapter D, Chapter 411, Government Code, is amended by adding Section 411.054 to read as follows:

Sec. 411.054. INCIDENT-BASED CRIME STATISTICS REPORTING GOAL. (a) The department shall establish a goal that, not later than September 1, 2019, all local law enforcement agencies:

(1) will have implemented an incident-based reporting system that meets the reporting requirements of the National Incident-Based Reporting System of the Uniform Crime Reporting Program of the Federal Bureau of Investigation; and

(2) will use the system described by Subdivision (1) to submit to the department information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency.

(b) Not later than January 1, 2017, the department shall submit a report to the legislature that identifies the number of local law enforcement agencies that have implemented the system described by Subsection (a).

SECTION 11. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0141 to read as follows:

Sec. 411.0141. MULTIUSE TRAINING FACILITY. (a) The Texas Facilities Commission shall construct a multiuse training facility to be used by the department, the Texas military forces, county and municipal law enforcement agencies, and any other military or law enforcement agency, including agencies of the federal government, for training purposes.

(b) The Texas Facilities Commission, with the assistance of the department, shall locate and acquire real property for the purpose of constructing the training facility. The governing body of a county or municipality, on behalf of the county or municipality, may donate real property to the department for the training facility.The donation may be in fee simple or otherwise.

(c) The department shall, with the assistance of the Texas Facilities Commission, design the training facility.

(d) On completion of the construction of the training facility, the Texas Facilities Commission shall transfer ownership of the training facility, including the real property and buildings, to the department.

(e) The department shall manage the training facility and may adopt rules necessary to implement this section. The department shall make the training facility available for use by the department, the Texas military forces, county and municipal law enforcement agencies, and any other military or law enforcement agency, including agencies of the federal government. The department may set and collect fees for the use of the training facility.

SECTION 12. Section 772.007, Government Code, is reenacted to read as follows:

Sec. 772.007. TEXAS ANTI-GANG GRANT PROGRAM. (a) The criminal justice division established under Section 772.006 shall administer a competitive grant program to support regional, multidisciplinary approaches to combat gang violence through the coordination of gang prevention, intervention, and suppression activities.

(b) The grant program administered under this section must be directed toward regions of this state that have demonstrably high levels of gang violence.

(c) The criminal justice division shall award grants to qualified applicants, as determined by the division, that demonstrate a comprehensive approach that balances gang prevention, intervention, and suppression activities to reduce gang violence.

(d) The criminal justice division shall include in the biennial report required by Section 772.006(a)(9) detailed reporting of the results and performance of the grant program administered under this section.

(e) The criminal justice division may use any revenue available for purposes of this section.

SECTION 13. Chapter 362, Local Government Code, is amended by adding Section 362.005 to read as follows:

Sec. 362.005. TEXAS TRANSNATIONAL INTELLIGENCE CENTER. (a) The sheriff's department of a county with a population of at least 700,000 but not more than 800,000 that borders the Texas-Mexico border and the police department of the municipality having the largest population in that county shall jointly establish and operate the Texas Transnational Intelligence Center as a central repository of real-time intelligence relating to:

(1) autopsies in which the person's death is likely connected to transnational criminal activity;

(2) criminal activity in the counties along the Texas-Mexico border and certain other counties; and

(3) other transnational criminal activity in the state.

(b) The Texas Department of Public Safety shall assist the county sheriff's department and the municipal police department in the establishment and operation of the center.

(c) Each law enforcement agency in a county located along the Texas-Mexico border or in a county that contains a federal checkpoint shall report to the Texas Transnational Intelligence Center intelligence regarding criminal activity in the law enforcement agency's jurisdiction, including details on kidnappings, home invasions, and incidents of impersonation of law enforcement officers. The Texas Alcoholic Beverage Commission and Parks and Wildlife Department shall report to the center intelligence regarding transnational criminal activity in the agency's jurisdiction.

(d) The intelligence in the Texas Transnational Intelligence Center shall be made available to each law enforcement agency in the state and the Texas Alcoholic Beverage Commission and Parks and Wildlife Department.

(e) The Texas Transnational Intelligence Center shall comply with Section 421.085, Government Code, and the rules relating to that section.

SECTION 14. Section 20.05, Penal Code, is amended to read as follows:

Sec. 20.05. SMUGGLING OF PERSONS. (a) A person commits an offense if the person, *with the intent to obtain a pecuniary benefit, knowingly:*

(1) [~~intentionally~~] uses a motor vehicle, aircraft, [~~or~~] watercraft, *or other means of conveyance* to transport an individual with the intent to:

(A) [~~(1)~~] conceal the individual from a peace officer or special investigator; or

(B) [~~(2)~~] flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor; *or*

(2) encourages or induces a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection.

(b) *An* [~~Except as provided by Subsection (c), an~~] offense under this section is [~~a state jail felony.~~

[~~(c) An offense under this section is~~] a felony of the third degree, *except that* [~~if the actor commits~~] the offense *is*:

(1) *a felony of the second degree if:*

(A) the actor commits the offense [~~for pecuniary benefit; or~~

[~~(2)~~] in a manner that creates a substantial likelihood that the *smuggled* [~~transported~~] individual will suffer serious bodily injury or death*; or*

(B) the smuggled individual is a child younger than 18 years of age at the time of the offense; or

(2) a felony of the first degree if:

(A) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or

(B) the smuggled individual suffered serious bodily injury or death.

(c) [~~(d)~~] It is an affirmative defense to prosecution *of an offense* under this section, *other than an offense punishable under Subsection (b)(1)(A) or (b)(2),* that the actor is related to the *smuggled* [~~transported~~] individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

(d) [~~(e)~~] If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

SECTION 15. Chapter 20, Penal Code, is amended by adding Section 20.06 to read as follows:

Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) A person commits an offense if, during a period that is 10 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20.05.

(b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20.05 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 10 or more days in duration, engaged two or more times in conduct that constitutes an offense under Section 20.05.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20.05, a defendant may not be convicted of the offense under Section 20.05 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20.05:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20.05 is alleged to have been committed against the same victim.

(e) Except as provided by Subsections (f) and (g), an offense under this section is a felony of the second degree.

(f) An offense under this section is a felony of the first degree if:

(1) the conduct constituting an offense under Section 20.05 is conducted in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death; or

(2) the smuggled individual is a child younger than 18 years of age at the time of the offense.

(g) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years, if:

(1) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or

(2) the smuggled individual suffered serious bodily injury or death.

SECTION 16. Sections 71.02(a) and (b), Penal Code, are amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5–a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05 *or 20.06*; or

(18) any offense classified as a felony under the Tax Code.

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for:

(1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:

(A) the victim of the offense is younger than six years of age;

(B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by Section 22.021(a)(2)(A); or

(C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense; [~~or~~]

(2) *life or for any term of not more than 99 years or less than 30 years if the most serious offense is an offense under Section 20.06 that is punishable under Subsection (g) of that section; or*

(3) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1) *or (2).*

SECTION 17. (a) The lieutenant governor and the speaker of the house of representatives shall create a joint interim committee to study border security.

(b) The committee shall be composed of 10 members as follows:

(1) five members of the senate appointed by the lieutenant governor; and

(2) five members of the house of representatives appointed by the speaker of the house of representatives.

(c) The lieutenant governor and speaker of the house of representatives shall each designate a co-chair from among the committee members.

(d) The committee shall submit a full report, including findings and recommendations, to the 85th Legislature before it convenes in regular session in January of 2017.

(e) The lieutenant governor and the speaker of the house of representatives shall appoint the members of the committee created under this section as soon as possible after the effective date of this Act.

SECTION 18. The change in law made by this Act to Section 4, Article 18.20, Code of Criminal Procedure, applies only to an application for an interception order filed on or after the effective date of this Act. An application for an interception order filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 19. Not later than December 1, 2015, the office of the attorney general shall establish the transnational and organized crime division as required by Section 402.038, Government Code, as added by this Act.

SECTION 20. The changes in law made by this Act to Sections 20.05 and 71.02, Penal Code, 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 21. To the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 22. This Act takes effect September 1, 2015.

Passed by the House on March 19, 2015: Yeas 130, Nays 11, 1 present, not voting; the House concurred in Senate amendments to H.B. No. 11 on May 28, 2015: Yeas 122, Nays 22, 2 present, not voting; passed by the Senate, with amendments, on May 26, 2015: Yeas 27, Nays 4.

Approved June 9, 2015.

Effective September 1, 2015.