

## CHAPTER 791

## S.B. No. 175

An Act relating to the creation of the offense of abandoning or endangering a child and the admissibility of testimony of certain persons in the prosecution of the offense; providing penalties; adding Section 22.041 to Chapter 22, Penal Code, as amended; amending Article 38.11, Code of Criminal Procedure, 1965, as amended.

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

**SECTION 1.** Chapter 22, Penal Code, as amended, is amended by adding Section 22.041 to read as follows:

*"Section 22.041. ABANDONING OR ENDANGERING CHILD. (a) In this section, 'abandon' means to leave a child in any place without intent to return for the child and without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.*

*"(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.*

*"(c) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.*

*"(d) Except as provided by Subsection (e) of this section, an offense under Subsection (b) of this section is a Class A misdemeanor.*

*"(e) An offense under Subsection (b) of this section is a felony of the third degree if the actor abandons the child under circumstances that a reasonable person would believe would place the child in imminent danger of death, bodily injury, or physical or mental impairment.*

*"(f) An offense under Subsection (c) of this section is a Class A misdemeanor."*

**SECTION 2.** Article 38.11, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

**"Article 38.11. HUSBAND OR WIFE AS WITNESS.** Neither husband nor wife shall, in any case, testify as to communications made by one to the other while married. Neither husband nor wife shall, in any case, after the marriage relation ceases, be made witnesses as to any communication made while the marriage relation existed except in a case where one or the other is on trial for an offense and a declaration or communication made by the wife to the husband or by the husband to the wife goes to extenuate or justify the offense. The husband and wife may, in all criminal actions, be witnesses for each other, but except as hereinafter provided, they shall in no case testify against each other in a criminal prosecution. However, a wife or husband may voluntarily testify against each other in any case for an offense involving any grade of assault or violence committed by one against the other or against any child of either under 16 years of age, [✕] in any case where either is charged with incest of a child of either, [✕] in any case where either is charged with bigamy, [✕] in any case where either is charged with interference with child custody, [✕] in any case where either is charged with nonsupport of his or her spouse or minor child, or in any case where either is charged with an offense under Section 22.041, Penal Code."

**SECTION 3.** This Act takes effect September 1, 1985.

**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 the Senate on April 18, 1985, by the following vote: Yeas 31, Nays 0; Senate concurred in House amendment on May 23, 1985, by a viva-voce vote; passed the House, with amendment, on May 21, 1985, by a non-record vote.

Approved: June 15, 1985

Effective: September 1, 1985