

## LEGISLATIVE PROPOSAL

From: Sexual Orientation and Gender Identification Issues (SOGII) Section

To: Legislative Policy Committee of State Bar of Texas

Re: Legislative Proposal to Repeal Penal Code §21.06

Name and wording of Proposed Bill

### A BILL TO BE ENTITLED

1-1

### AN ACT

1-2 relating to the repeal of the criminal offense of homosexual sodomy following the  
1-3 United State Supreme Court's decision in *Lawrence v. Texas*, 539 U.S. 558 (2003).

1-4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-5 SECTION 1. Section 21.06, Penal Code, is repealed.

1-6 SECTION 2. This Act takes effect September 1, 2005.

1-7 SECTION 3. The importance of this legislation and the crowded conditions of  
1-8 the calendars in both houses create an emergency and an imperative public necessity that  
1-9 the constitutional rule requiring bills to be read on three several days in each house be  
1-10 suspended, and this rule is hereby suspended.

### Narrative Explanation:

Entitled "Homosexual Conduct," Section 21.06 provides:

(a) A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.

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

TEX. PEN. CODE §21.06. In sum, this statute makes it a crime for two persons of the same sex to engage in certain sexual conduct.

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the United States Supreme Court reviewed the constitutionality of Section 21.06 of the Texas Penal Code. On June 26, 2003, the Court struck down Section 21.06 as unconstitutional under the Due Process Clause of the Fourteenth Amendment.

This bill proposes to remove this section, which has been deemed unconstitutional by the United States Supreme Court, from the Texas Penal Code.

Although prior legislation has been offered to repeal Section 21.06—*see, e.g.*, Tex. H.B. 687, 77th Leg., R.S. (2001); Tex. H.B. 337, 76th Leg., R.S. (1999); Tex. H.B. 1329, 75th Leg., R.S. (1997)—to our knowledge, this is the first legislation proposed following the *Lawrence* decision.

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I, Rick Thompson, Immediate Past Chair of the Sexual Orientation and Gender Identification Issues Section, hereby verifies that all sections and committees of the State Bar have been sent the legislation for comment.

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Rick Thompson