

## **BILL ANALYSIS**

Senate Research Center  
79R10206 UM-D

H.B. 904  
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Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Under most circumstances, a defendant who receives multiple convictions and sentences in a single trial serves those sentences concurrently. That policy encourages defendants to consolidate multiple crimes into a single criminal action, saving the court system time and resources. However, in 1997, the 75th Legislature determined that judges should have the discretion, following a single trial over multiple crimes, to consider ordering defendants to serve consecutive sentences for those crimes. The listed crimes were intoxication manslaughter and sex offenses (indecent with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, and sexual performance by a child).

H.B. 904 adds the offense of intoxication assault to the list of crimes for which judges would have the discretion to order a defendant to serve consecutive sentences following a single trial. In a drunk driving accident, there are frequently multiple victims. The stacking laws should apply equally to punish those defendants who seriously injured (intoxication assault) as well as killed (intoxication manslaughter) multiple victims. This change will consolidate such cases and avoid the need for multiple trials.

Since 1997, Texas has seen an explosion in the prosecution of criminal defendants for two sex-related crimes: possession or promotion of child pornography, and the relatively new offense of improper photography or visual recording. The development of the Internet and the availability of inexpensive computers, digital cameras, and equipment has made it easier for criminals to access and spread child pornography and secretly photograph or videotape sexual conduct without consent. In addition, these defendants frequently collect multiple images or recordings, each of which can be prosecuted separately.

H.B. 904 adds the above sex-related offenses to the list of crimes for which judges would have the discretion to order a defendant to serve consecutive sentences following a single trial. Under current law, a prosecutor must try a defendant separately for each image of child pornography or recording made of sexual conduct to obtain such stacked sentences. By expanding the judge's discretion, Texas will do more to discourage the possession of child pornography and the creation and promotion of secret recordings of sexual conduct. This change will also make the trials of such cases more efficient, reducing the necessity for multiple trials.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 3.03(b), Penal Code, to provide that if the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of an offense under Section 49.07 (Intoxication Assault) or 49.08 (Intoxication Manslaughter), regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections, rather than just an offense under Section 49.08. Makes conforming changes. Provides that if the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of an offense under Section 21.15 (Improper Photography or Visual Recording) or 43.26 (Possession or Promotion of Child Pornography), regardless of whether the accused is

convicted of violations of both sections, or an offense for which a plea agreement was reached in a case in which the accused was charged with more than one offense under Section 21.15 or 43.26, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections.

SECTION 2. Amends Section 3.04(c), Penal Code, to make a conforming change.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2005.