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**MEMORANDUM**

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**TO:** JUDGES TRYING CRIMINAL CASES  
**FROM:** DEBORAH SELDEN AND INTERNS JOSH SCHNEIDER, ELIZABETH WIEHLE, MARY MARTIN, AND PETER CHICKRIS  
**SUBJECT:** 04/09/08 COURT OF CRIMINAL APPEALS OPINIONS  
**DATE:** 04/11/08  
**CC:** JACK THOMPSON

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***Alberty v. State*, \_ S.W.3d\_ (Tex. Crim. App. 2007) [PD-0822-07 and PD-0823-07, 4/09/08].**

JOHNSON, J., *delivered the opinion of the Court, in which* KELLER, P.J., MEYERS, PRICE, WOMACK, HERVEY, HOLCOMB, *and* COCHRAN, JJ, *joined*, KEASLER, J., *concurred*.

**FACTS:** A jury convicted defendant of two instances of aggravated sexual assault of a child and the court sentenced him to fifteen years in prison for each offense. While much of the trial testimony dealt with allegations of an ongoing series of assaults that occurred when defendant was a juvenile, he was tried and convicted of offenses that happened after he became an adult. On appeal, defendant argued that the jury charge was erroneous because it instructed the jury that they could convict defendant of any offense occurring prior to the date of the indictments. The court of appeals affirmed after mischaracterizing defendant's point of error regarding the jury charge claim as a jurisdictional claim and holding that he waived error because he failed to file a written motion challenging the district court's jurisdiction. The Court of Criminal Appeals reversed the court of appeals and remanded with instructions to consider the merits of his point of error regarding whether the jury charge was erroneous because it did not limit the "on or about" language in regard to the statute of limitations to any date prior to the date of the filing of the indictment and / or after his seventeenth birthday.

**JURISDICTION—JUVENILE WAIVER – DISTRICT COURT**

When challenging a district court's jurisdiction on grounds that the juvenile court has exclusive jurisdiction and has not waived jurisdiction, the Code of Criminal Procedure requires a defendant to contest the district court's jurisdiction before jury selection; otherwise, defendant will have waived his right to raise the jurisdictional issue on appeal. ***Alberty v. State*, \_ S.W.3d\_ (Tex. Crim. App. 2007) [PD-0822-07 and PD-0823-07, 4/09/08].**

**JURISDICTION—EXCLUSIVE JUVENILE V. DISTRICT COURT**

A defendant can challenge the district court’s jurisdiction only when the juvenile court has exclusive jurisdiction. *Alberty v. State*, \_ S.W.3d\_ (Tex. Crim. App. 2007) [PD-0822-07 and PD-0823-07, 4/09/08].

**JURISDICTION—EXCLUSIVE JUVENILE V. DISTRICT COURT**

The juvenile court has exclusive jurisdiction when the trial court’s record shows no evidence supporting jurisdiction in both the juvenile and the district courts. *Alberty v. State*, \_ S.W.3d\_ (Tex. Crim. App. 2007) [PD-0822-07 and PD-0823-07, 4/09/08].

**AGE RESTRICTIONS – CRIMINAL PROSECUTION – MINORS UNDER 17**

There are age restrictions on criminal prosecution. For example, unless a juvenile court waives jurisdiction, a defendant cannot be held criminally responsible for sexual assaults he commits while under the age of seventeen. *Alberty v. State*, \_ S.W.3d\_ (Tex. Crim. App. 2007) [PD-0822-07 and PD-0823-07, 4/09/08].

**AGE RESTRICTIONS – CRIMINAL PROSECUTION – MINORS UNDER 15**

A minor cannot be held criminally responsible for sexual assaults he commits while he is under the age of fifteen. *Alberty v. State*, \_ S.W.3d\_ (Tex. Crim. App. 2007) [PD-0822-07 and PD-0823-07, 4/09/08].