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et al.

H.B. No. 2228

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the creation of the offense of online sexual
3 solicitation of a minor.

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

5 SECTION 1. Chapter 33, Penal Code, is amended by adding
6 Section 33.021 to read as follows:

7 Sec. 33.021. ONLINE SOLICITATION OF A MINOR. (a) In this
8 section:

9 (1) "Minor" means:

10 (A) an individual who represents himself or
11 herself to be younger than 17 years of age; or

12 (B) an individual whom the actor believes to be
13 younger than 17 years of age.

14 (2) "Sexual contact," "sexual intercourse," and
15 "deviate sexual intercourse" have the meanings assigned by Section
16 21.01.

17 (3) "Sexually explicit" means any communication,
18 language, or material, including a photographic or video image,
19 that relates to or describes sexual conduct, as defined by Section
20 43.25.

21 (b) A person who is 17 years of age or older commits an
22 offense if, with the intent to arouse or gratify the sexual desire
23 of any person, the person, over the Internet or by electronic mail
24 or a commercial online service, intentionally:

1 (1) communicates in a sexually explicit manner with a
2 minor; or

3 (2) distributes sexually explicit material to a minor.

4 (c) A person commits an offense if the person, over the
5 Internet or by electronic mail or a commercial online service,
6 knowingly solicits a minor to meet another person, including the
7 actor, with the intent that the minor will engage in sexual contact,
8 sexual intercourse, or deviate sexual intercourse with the actor or
9 another person.

10 (d) It is not a defense to prosecution under Subsection (c)
11 that:

12 (1) the meeting did not occur;

13 (2) the actor did not intend for the meeting to occur;

14 or

15 (3) the actor was engaged in a fantasy at the time of
16 commission of the offense.

17 (e) It is a defense to prosecution under this section that
18 at the time conduct described by Subsection (b) or (c) was
19 committed:

20 (1) the actor was married to the minor; or

21 (2) the actor was not more than three years older than
22 the minor and the minor consented to the conduct.

23 (f) An offense under Subsection (b) is a state jail felony,
24 and an offense under Subsection (c) is a felony of the third degree,
25 except that an offense under Subsection (b) or (c) is a felony of
26 the second degree if the minor is younger than 14 years of age or is
27 an individual whom the actor believes to be younger than 14 years of

1 age.

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

5 SECTION 2. Article 62.01(5), Code of Criminal Procedure, is
6 amended to read as follows:

7 (5) "Reportable conviction or adjudication" means a
8 conviction or adjudication, regardless of the pendency of an
9 appeal, that is:

10 (A) a conviction for a violation of Section 21.11
11 (Indecency with a child), 22.011 (Sexual assault), 22.021
12 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct),
13 Penal Code;

14 (B) a conviction for a violation of Section 43.05
15 (Compelling prostitution), 43.25 (Sexual performance by a child),
16 or 43.26 (Possession or promotion of child pornography), Penal
17 Code;

18 (C) a conviction for a violation of Section
19 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant
20 committed the offense with intent to violate or abuse the victim
21 sexually;

22 (D) a conviction for a violation of Section 30.02
23 (Burglary), Penal Code, if the offense is punishable under
24 Subsection (d) of that section and the defendant committed the
25 offense with intent to commit a felony listed in Paragraph (A) or
26 (C);

27 (E) a conviction for a violation of Section 20.02

1 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated
2 kidnapping), Penal Code, if the judgment in the case contains an
3 affirmative finding under Article 42.015;

4 (F) the second conviction for a violation of
5 Section 21.08 (Indecent exposure), Penal Code;

6 (G) a conviction for an attempt, conspiracy, or
7 solicitation, as defined by Chapter 15, Penal Code, to commit an
8 offense listed in Paragraph (A), (B), (C), (D), or (E);

9 (H) an adjudication of delinquent conduct:

10 (i) based on a violation of one of the
11 offenses listed in Paragraph (A), (B), (C), (D), [~~or~~] (G), or (N)
12 or, if the order in the hearing contains an affirmative finding that
13 the victim or intended victim was younger than 17 years of age, one
14 of the offenses listed in Paragraph (E); or

15 (ii) for which two violations of the
16 offense listed in Paragraph (F) are shown;

17 (I) a deferred adjudication for an offense listed
18 in:

19 (i) Paragraph (A), (B), (C), (D), [~~or~~] (G), or
20 or (N); or

21 (ii) Paragraph (E) if the papers in the case
22 contain an affirmative finding that the victim or intended victim
23 was younger than 17 years of age;

24 (J) a conviction under the laws of another state,
25 federal law, the laws of a foreign country, or the Uniform Code of
26 Military Justice for an offense containing elements that are
27 substantially similar to the elements of an offense listed under

1 Paragraph (A), (B), (C), (D), (E), [~~or~~] (G), or (N);

2 (K) an adjudication of delinquent conduct under
3 the laws of another state, federal law, or the laws of a foreign
4 country based on a violation of an offense containing elements that
5 are substantially similar to the elements of an offense listed
6 under Paragraph (A), (B), (C), (D), (E), [~~or~~] (G), or (N);

7 (L) the second conviction under the laws of
8 another state, federal law, the laws of a foreign country, or the
9 Uniform Code of Military Justice for an offense containing elements
10 that are substantially similar to the elements of the offense of
11 indecent exposure; [~~or~~]

12 (M) the second adjudication of delinquent
13 conduct under the laws of another state, federal law, or the laws of
14 a foreign country based on a violation of an offense containing
15 elements that are substantially similar to the elements of the
16 offense of indecent exposure; or

17 (N) a conviction for a violation of Section
18 33.021 (Online solicitation of a minor), Penal Code.

19 SECTION 3. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2005.