

By: McCall, Hegar, Woolley, Eiland, Keel,  
et al.

H.B. No. 2228

Substitute the following for H.B. No. 2228:

By: Keel

C.S.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 (b) A person commits an offense if, with the intent to  
18 arouse or gratify the sexual desire of any person, the person, over  
19 the Internet or by electronic mail or a commercial online service,  
20 intentionally:

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

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

24 (c) A person commits an offense if the person, over the

1 Internet or by electronic mail or a commercial online service,  
2 knowingly solicits a minor to meet another person, including the  
3 actor, with the intent that the minor will engage in sexual contact,  
4 sexual intercourse, or deviate sexual intercourse with the actor or  
5 another person.

6 (d) It is not a defense to prosecution under Subsection (c)  
7 that:

8 (1) the meeting did not occur; or

9 (2) the actor did not intend for the meeting to occur.

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

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

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

16 (f) An offense under Subsection (b) is a state jail felony,  
17 and an offense under Subsection (c) is a felony of the third degree,  
18 except that an offense under Subsection (b) or (c) is a felony of  
19 the second degree if the minor is younger than 14 years of age or is  
20 an individual whom the actor believes to be younger than 14 years of  
21 age.

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

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

27 (5) "Reportable conviction or adjudication" means a

1 conviction or adjudication, regardless of the pendency of an  
2 appeal, that is:

3 (A) a conviction for a violation of Section 21.11  
4 (Indecency with a child), 22.011 (Sexual assault), 22.021  
5 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct),  
6 Penal Code;

7 (B) a conviction for a violation of Section 43.05  
8 (Compelling prostitution), 43.25 (Sexual performance by a child),  
9 or 43.26 (Possession or promotion of child pornography), Penal  
10 Code;

11 (C) a conviction for a violation of Section  
12 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant  
13 committed the offense with intent to violate or abuse the victim  
14 sexually;

15 (D) a conviction for a violation of Section 30.02  
16 (Burglary), Penal Code, if the offense is punishable under  
17 Subsection (d) of that section and the defendant committed the  
18 offense with intent to commit a felony listed in Paragraph (A) or  
19 (C);

20 (E) a conviction for a violation of Section 20.02  
21 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated  
22 kidnapping), Penal Code, if the judgment in the case contains an  
23 affirmative finding under Article 42.015;

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

26 (G) a conviction for an attempt, conspiracy, or  
27 solicitation, as defined by Chapter 15, Penal Code, to commit an

1 offense listed in Paragraph (A), (B), (C), (D), or (E);

2 (H) an adjudication of delinquent conduct:

3 (i) based on a violation of one of the  
4 offenses listed in Paragraph (A), (B), (C), (D), ~~(G)~~, or (N)  
5 or, if the order in the hearing contains an affirmative finding that  
6 the victim or intended victim was younger than 17 years of age, one  
7 of the offenses listed in Paragraph (E); or

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

10 (I) a deferred adjudication for an offense listed  
11 in:

12 (i) Paragraph (A), (B), (C), (D), ~~(G)~~,  
13 or (N); or

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

17 (J) a conviction under the laws of another state,  
18 federal law, the laws of a foreign country, or the Uniform Code of  
19 Military Justice for an offense containing elements that are  
20 substantially similar to the elements of an offense listed under  
21 Paragraph (A), (B), (C), (D), (E), ~~(G)~~, or (N);

22 (K) an adjudication of delinquent conduct under  
23 the laws of another state, federal law, or the laws of a foreign  
24 country based on a violation of an offense containing elements that  
25 are substantially similar to the elements of an offense listed  
26 under Paragraph (A), (B), (C), (D), (E), ~~(G)~~, or (N);

27 (L) the second conviction under the laws of

1 another state, federal law, the laws of a foreign country, or the  
2 Uniform Code of Military Justice for an offense containing elements  
3 that are substantially similar to the elements of the offense of  
4 indecent exposure; ~~or~~

5 (M) the second adjudication of delinquent  
6 conduct under the laws of another state, federal law, or the laws of  
7 a foreign country based on a violation of an offense containing  
8 elements that are substantially similar to the elements of the  
9 offense of indecent exposure; or

10 (N) a conviction for a violation of Section  
11 33.021 (Online solicitation of a minor), Penal Code.

12 SECTION 3. This Act takes effect September 1, 2005.