

1-1 By: McCall, et al. (Senate Sponsor - Ellis) H.B. No. 2228
1-2 (In the Senate - Received from the House April 13, 2005;
1-3 April 14, 2005, read first time and referred to Committee on
1-4 Criminal Justice; May 20, 2005, reported favorably by the
1-5 following vote: Yeas 4, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the creation of the offense of online sexual
1-9 solicitation of a minor.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 33, Penal Code, is amended by adding
1-12 Section 33.021 to read as follows:

1-13 Sec. 33.021. ONLINE SOLICITATION OF A MINOR. (a) In this
1-14 section:

1-15 (1) "Minor" means:

1-16 (A) an individual who represents himself or
1-17 herself to be younger than 17 years of age; or

1-18 (B) an individual whom the actor believes to be
1-19 younger than 17 years of age.

1-20 (2) "Sexual contact," "sexual intercourse," and
1-21 "deviate sexual intercourse" have the meanings assigned by Section
1-22 21.01.

1-23 (3) "Sexually explicit" means any communication,
1-24 language, or material, including a photographic or video image,
1-25 that relates to or describes sexual conduct, as defined by Section
1-26 43.25.

1-27 (b) A person who is 17 years of age or older commits an
1-28 offense if, with the intent to arouse or gratify the sexual desire
1-29 of any person, the person, over the Internet or by electronic mail
1-30 or a commercial online service, intentionally:

1-31 (1) communicates in a sexually explicit manner with a
1-32 minor; or

1-33 (2) distributes sexually explicit material to a minor.

1-34 (c) A person commits an offense if the person, over the
1-35 Internet or by electronic mail or a commercial online service,
1-36 knowingly solicits a minor to meet another person, including the
1-37 actor, with the intent that the minor will engage in sexual contact,
1-38 sexual intercourse, or deviate sexual intercourse with the actor or
1-39 another person.

1-40 (d) It is not a defense to prosecution under Subsection (c)
1-41 that:

1-42 (1) the meeting did not occur;

1-43 (2) the actor did not intend for the meeting to occur;

1-44 or

1-45 (3) the actor was engaged in a fantasy at the time of
1-46 commission of the offense.

1-47 (e) It is a defense to prosecution under this section that
1-48 at the time conduct described by Subsection (b) or (c) was
1-49 committed:

1-50 (1) the actor was married to the minor; or

1-51 (2) the actor was not more than three years older than
1-52 the minor and the minor consented to the conduct.

1-53 (f) An offense under Subsection (b) is a state jail felony,
1-54 and an offense under Subsection (c) is a felony of the third degree,
1-55 except that an offense under Subsection (b) or (c) is a felony of
1-56 the second degree if the minor is younger than 14 years of age or is
1-57 an individual whom the actor believes to be younger than 14 years of
1-58 age.

1-59 (g) If conduct that constitutes an offense under this
1-60 section also constitutes an offense under any other law, the actor
1-61 may be prosecuted under this section, the other law, or both.

1-62 SECTION 2. Article 62.01(5), Code of Criminal Procedure, is
1-63 amended to read as follows:

1-64 (5) "Reportable conviction or adjudication" means a

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

2-3 (A) a conviction for a violation of Section 21.11
 2-4 (Indecency with a child), 22.011 (Sexual assault), 22.021
 2-5 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct),
 2-6 Penal Code;

2-7 (B) a conviction for a violation of Section 43.05
 2-8 (Compelling prostitution), 43.25 (Sexual performance by a child),
 2-9 or 43.26 (Possession or promotion of child pornography), Penal
 2-10 Code;

2-11 (C) a conviction for a violation of Section
 2-12 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant
 2-13 committed the offense with intent to violate or abuse the victim
 2-14 sexually;

2-15 (D) a conviction for a violation of Section 30.02
 2-16 (Burglary), Penal Code, if the offense is punishable under
 2-17 Subsection (d) of that section and the defendant committed the
 2-18 offense with intent to commit a felony listed in Paragraph (A) or
 2-19 (C);

2-20 (E) a conviction for a violation of Section 20.02
 2-21 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated
 2-22 kidnapping), Penal Code, if the judgment in the case contains an
 2-23 affirmative finding under Article 42.015;

2-24 (F) the second conviction for a violation of
 2-25 Section 21.08 (Indecent exposure), Penal Code;

2-26 (G) a conviction for an attempt, conspiracy, or
 2-27 solicitation, as defined by Chapter 15, Penal Code, to commit an
 2-28 offense listed in Paragraph (A), (B), (C), (D), or (E);

2-29 (H) an adjudication of delinquent conduct:

2-30 (i) based on a violation of one of the
 2-31 offenses listed in Paragraph (A), (B), (C), (D), ~~(G)~~, or (N)
 2-32 or, if the order in the hearing contains an affirmative finding that
 2-33 the victim or intended victim was younger than 17 years of age, one
 2-34 of the offenses listed in Paragraph (E); or

2-35 (ii) for which two violations of the
 2-36 offense listed in Paragraph (F) are shown;

2-37 (I) a deferred adjudication for an offense listed
 2-38 in:

2-39 (i) Paragraph (A), (B), (C), (D), ~~(G)~~,
 2-40 or (N); or

2-41 (ii) Paragraph (E) if the papers in the case
 2-42 contain an affirmative finding that the victim or intended victim
 2-43 was younger than 17 years of age;

2-44 (J) a conviction under the laws of another state,
 2-45 federal law, the laws of a foreign country, or the Uniform Code of
 2-46 Military Justice for an offense containing elements that are
 2-47 substantially similar to the elements of an offense listed under
 2-48 Paragraph (A), (B), (C), (D), (E), ~~(G)~~, or (N);

2-49 (K) an adjudication of delinquent conduct under
 2-50 the laws of another state, federal law, or the laws of a foreign
 2-51 country based on a violation of an offense containing elements that
 2-52 are substantially similar to the elements of an offense listed
 2-53 under Paragraph (A), (B), (C), (D), (E), ~~(G)~~, or (N);

2-54 (L) the second conviction under the laws of
 2-55 another state, federal law, the laws of a foreign country, or the
 2-56 Uniform Code of Military Justice for an offense containing elements
 2-57 that are substantially similar to the elements of the offense of
 2-58 indecent exposure; ~~(G)~~

2-59 (M) the second adjudication of delinquent
 2-60 conduct under the laws of another state, federal law, or the laws of
 2-61 a foreign country based on a violation of an offense containing
 2-62 elements that are substantially similar to the elements of the
 2-63 offense of indecent exposure; or

2-64 (N) a conviction for a violation of Section
 2-65 33.021 (Online solicitation of a minor), Penal Code.

2-66 SECTION 3. This Act takes effect immediately if it receives
 2-67 a vote of two-thirds of all the members elected to each house, as
 2-68 provided by Section 39, Article III, Texas Constitution. If this
 2-69 Act does not receive the vote necessary for immediate effect, this

3-1 Act takes effect September 1, 2005.

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