

## **BILL ANALYSIS**

C.S.H.B. 2801  
By: Johnson  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Last year, there were approximately 350 individuals incarcerated in the Texas Department of Criminal Justice for prostitution. Interested parties note that there are lifelong consequences for people with felony convictions, including limited access to employment, housing, medical and mental health care, and federal and state benefits. In addition, the parties assert that taxpayers pay between \$15,000 to \$18,000 per year to house these individuals in prison, while participation in a community-based rehabilitation program would be much more cost-effective. Further, incarceration does not adequately address the mental illness, drug and alcohol addictions, and trauma faced by many individuals who have resorted to prostitution. The parties suggest that increasing the number of previous prostitution convictions that lead to penalty enhancements for individuals who offer to engage, agree to engage, or engage in sexual conduct for a fee would provide these individuals the opportunity to get their lives back on track without having a felony conviction hanging over their heads. C.S.H.B. 2801 seeks to remedy this situation.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2801 amends the Penal Code to decrease from a state jail felony to a Class A misdemeanor with a minimum term of confinement of 90 days the penalty for prostitution for a defendant who received or was to receive a fee and who has been convicted three or more times of a prostitution offense. The bill makes it a state jail felony for such a defendant who has previously been convicted eight or more times, rather than three or more times, of a prostitution offense. The bill clarifies that the current state jail felony, third degree felony, and second degree felony penalty enhancements for a prostitution offense resulting from previous prostitution convictions apply only to a defendant who paid or was to pay a fee.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

#### INTRODUCED

SECTION 1. Chapter 32, Code of Criminal Procedure, is amended by adding Article 32.03 to read as follows:

Art. 32.03. DISMISSAL OF CERTAIN PROSTITUTION OFFENSES. (a) At any

#### HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

83R 27607

13.126.322

Substitute Document Number: 83R 23784

time before trial commences for an offense under Section 43.02, Penal Code, a court may, on the request of the defendant and with the consent of the attorney representing the state, defer proceedings without entering an adjudication of guilt and permit the defendant to participate in a pretrial intervention program.

(b) A pretrial intervention program may be offered by a faith-based organization or other nonprofit organization and must:

(1) require the defendant to complete not more than 50 hours of community service; and

(2) include at least 100 hours of instruction, counseling, or treatment concerning sexual abuse, sexually transmitted diseases, mental health, and substance abuse.

(c) Notwithstanding Subsection (b), a first offender prostitution prevention program established under Chapter 169, Health and Safety Code, satisfies the requirements of this article.

(d) If a defendant successfully completes a pretrial intervention program not later than the first anniversary of the date the proceedings were deferred, the court may dismiss the proceedings against the defendant and discharge the defendant.

SECTION 2. Section 43.02, Penal Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) An offense under **Subsection (a)(1)** is a Class **C** misdemeanor, except that the offense is:

(1) a Class **B** misdemeanor if the actor has previously been convicted one or two times of an offense **under Subsection (a)(1); or**

(2) a Class A misdemeanor if the actor has previously been convicted three or more times of an offense **under Subsection (a)(1).**

(c-1) An offense **under Subsection (a)(2)** [~~this section~~] is a Class B misdemeanor, except

SECTION 1. Section 43.02(c), Penal Code, is amended to read as follows:

(c) An offense under **this section** is a Class **B** misdemeanor, except that the offense is:

(1) a Class **A** misdemeanor if the defendant [~~actor~~] has previously been convicted one or two times of an offense **under this section;**

(2) for a defendant who received or was to receive a fee:

(A) a Class A misdemeanor **with a minimum term of confinement of 90 days if the defendant has previously been convicted three or more times but fewer than eight times of an offense under this section; or**

(B) a state jail felony if the defendant has previously been convicted eight or more times of an offense under this section; or

*(See Subsec. (c) above.)*

that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (a)(2) [this section];

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (a)(2) [this section];

(3) a felony of the third degree if the person solicited is 14 years of age or older and younger than 18 years of age; or

(4) a felony of the second degree if the person solicited is younger than 14 years of age.

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. This Act takes effect September 1, 2013.

(3) for a defendant who paid or was to pay a fee;

*(See Subsec. (c)(1) above.)*

(A) a state jail felony if the defendant [actor] has previously been convicted three or more times of an offense under this section;

(B) [(3)] a felony of the third degree if the person with respect to whom the fee was paid or to be paid [solicited] is 14 years of age or older and younger than 18 years of age; or

(C) [(4)] a felony of the second degree if the person with respect to whom the fee was paid or to be paid [solicited] is younger than 14 years of age.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.