

By: Menendez

H.B. No. 32

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for and certain other consequences of committing the offense of prostitution.

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

SECTION 1. Section 169.002(a), Health and Safety Code, is amended to read as follows:

(a) The commissioners court of a county or governing body of a municipality may establish a first offender prostitution prevention program for defendants charged with an offense under Section 43.02 [~~43.02(a)(2)~~], Penal Code [~~, in which the defendant offered or agreed to hire a person to engage in sexual conduct~~].

SECTION 2. Chapter 169, Health and Safety Code, is amended by adding Section 169.0035 to read as follows:

Sec. 169.0035. SEPARATE AND APPROPRIATE COUNSELING, SERVICES, AND CLASSROOM INSTRUCTION. A commissioners court of a county or governing body of a municipality that establishes a first offender prostitution prevention program under this chapter must provide separate and appropriate counseling, services, and classroom instruction under Section 169.003 for defendants charged under Section 43.02(a)(1), Penal Code, and defendants charged under Section 43.02(a)(2), Penal Code.

SECTION 3. Section 43.02, Penal Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

1 (a) A person commits an offense if the person [~~he~~]
2 knowingly:

3 (1) offers to engage, agrees to engage, or engages in
4 sexual conduct for a fee; or

5 (2) solicits another in a public place to engage with
6 the person [~~him~~] in sexual conduct for hire.

7 (b) An offense is established under Subsection (a)(1)
8 whether the actor is to receive or pay a fee. An offense is
9 established under Subsection (a)(2) whether the actor solicits a
10 person to hire the actor [~~him~~] or offers to hire the person
11 solicited.

12 (e) A conviction may be used for purposes of enhancement
13 under this section or enhancement under Subchapter D, Chapter 12,
14 but not under both this section and Subchapter D, Chapter 12. For
15 purposes of enhancement of penalties under this section or
16 Subchapter D, Chapter 12, a defendant is previously convicted of an
17 offense under this section if the defendant was adjudged guilty of
18 the offense or entered a plea of guilty or nolo contendere in return
19 for a grant of deferred adjudication, regardless of whether the
20 sentence for the offense was ever imposed or whether the sentence
21 was probated and the defendant was subsequently discharged from
22 community supervision.

23 SECTION 4. Section 43.03(b), Penal Code, is amended to read
24 as follows:

25 (b) An offense under this section is a Class A misdemeanor,
26 except that the offense is:

27 (1) a state jail felony if the actor has previously

1 been convicted of an offense under this section; or

2 (2) a felony of the second degree if:

3 (A) the person who provides prostitution
4 services from which the actor receives money or other property is
5 younger than 17 years of age at the time of the offense; or

6 (B) the actor solicits another to engage in
7 sexual conduct with a person who is younger than 17 years of age.

8 SECTION 5. Section 43.04(b), Penal Code, is amended to read
9 as follows:

10 (b) An offense under this section is a felony of the third
11 degree, unless any prostitute that is part of the actor's
12 prostitution enterprise is younger than 17 years of age at the time
13 of the offense, in which event it is a felony of the second degree.

14 SECTION 6. Article 62.001(5), Code of Criminal Procedure,
15 is amended to read as follows:

16 (5) "Reportable conviction or adjudication" means a
17 conviction or adjudication, including an adjudication of
18 delinquent conduct or a deferred adjudication, that, regardless of
19 the pendency of an appeal, is a conviction for or an adjudication
20 for or based on:

21 (A) a violation of Section 21.02 (Continuous
22 sexual abuse of young child or children), 21.11 (Indecency with a
23 child), 22.011 (Sexual assault), 22.021 (Aggravated sexual
24 assault), or 25.02 (Prohibited sexual conduct), Penal Code;

25 (B) a violation of Section 43.05 (Compelling
26 prostitution), 43.25 (Sexual performance by a child), or 43.26
27 (Possession or promotion of child pornography), Penal Code;

1 (B-1) a violation of Section 43.02
2 (Prostitution), Penal Code, if the offense is punishable under
3 Subsection (c)(3) or (4) of that section;

4 (B-2) a violation of Section 43.03 (Promotion of
5 prostitution), Penal Code, if the offense is punishable under
6 Subsection (b)(2) of that section;

7 (B-3) a violation of Section 43.04 (Aggravated
8 promotion of prostitution), Penal Code, if the offense is
9 punishable as a felony of the second degree;

10 (C) a violation of Section 20.04(a)(4)
11 (Aggravated kidnapping), Penal Code, if the actor committed the
12 offense or engaged in the conduct with intent to violate or abuse
13 the victim sexually;

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

19 (E) a violation of Section 20.02 (Unlawful
20 restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping),
21 Penal Code, if, as applicable:

22 (i) the judgment in the case contains an
23 affirmative finding under Article 42.015; or

24 (ii) the order in the hearing or the papers
25 in the case contain an affirmative finding that the victim or
26 intended victim was younger than 17 years of age;

27 (F) the second violation of Section 21.08

1 (Indecent exposure), Penal Code, but not if the second violation
2 results in a deferred adjudication;

3 (G) an attempt, conspiracy, or solicitation, as
4 defined by Chapter 15, Penal Code, to commit an offense or engage in
5 conduct listed in Paragraph (A), (B), (C), (D), (E), or (K);

6 (H) a violation of the laws of another state,
7 federal law, the laws of a foreign country, or the Uniform Code of
8 Military Justice for or based on the violation of an offense
9 containing elements that are substantially similar to the elements
10 of an offense listed under Paragraph (A), (B), (B-1), (B-2), (B-3),
11 (C), (D), (E), (G), (J), or (K), but not if the violation results in
12 a deferred adjudication;

13 (I) the second violation of the laws of another
14 state, federal law, the laws of a foreign country, or the Uniform
15 Code of Military Justice for or based on the violation of an offense
16 containing elements that are substantially similar to the elements
17 of the offense of indecent exposure, but not if the second violation
18 results in a deferred adjudication;

19 (J) a violation of Section 33.021 (Online
20 solicitation of a minor), Penal Code; or

21 (K) a violation of Section 20A.02(a)(3), (4),
22 (7), or (8) (Trafficking of persons), Penal Code.

23 SECTION 7. The change in law made by this Act applies only
24 to an offense committed on or after the effective date of this Act.
25 An offense committed before the effective date of this Act is
26 governed by the law in effect on the date the offense was committed,
27 and the former law is continued in effect for that purpose. For

1 purposes of this section, an offense was committed before the
2 effective date of this Act if any element of the offense occurred
3 before that date.

4 SECTION 8. This Act takes effect September 1, 2013.