

BILL ANALYSIS

C.S.H.B. 3326
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that Texas spends too much money every year incarcerating individuals for offenses that are punished more harshly than necessary. These parties further contend that probation and treatment work better than incarceration to reduce addiction and drug crime. C.S.H.B. 3326 seeks to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 3326 amends the Penal Code to increase the threshold amounts of pecuniary loss resulting from an offense of criminal mischief. The bill decreases the penalty for a graffiti offense resulting in less than \$100 of pecuniary loss to the defaced tangible property from a Class B misdemeanor to a Class C misdemeanor and increases the threshold amounts of pecuniary loss that trigger different penalty grades for graffiti offenses. The bill decreases from a state jail felony to a Class A misdemeanor the penalty for a burglary offense committed in a building other than a habitation. The bill increases the threshold amounts of the monetary value of property or service stolen in the activity resulting from an offense of theft or theft of service, respectively. The bill decreases from a state jail felony to a Class A misdemeanor the penalty for credit card or debit card abuse, with a certain exception. The bill decreases by one degree of punishment the penalties for certain offenses of fraudulent use or possession of identifying information. The bill repeals the state jail felony penalty enhancement for a forgery offense for a writing that is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check, authorization to debit an account at a financial institution, or similar sight order for payment of money, contract, release, or other commercial instrument.

C.S.H.B. 3326 makes the conduct constituting a prostitution offense applicable if a person engages in the conduct in return for receipt of a fee or if a person engages in the conduct based on the payment of a fee by the actor or another person on the actor's behalf. The bill specifies that a prostitution offense is established regardless of whether the actor is offered or actually receives the fee or regardless of whether the actor or another person on the actor's behalf offers or actually pays the fee, as applicable. The bill removes provisions relating to the establishment of the offense with respect to receiving or paying a fee or the hiring of a person. The bill retains the Class A misdemeanor enhancement for a prostitution offense but specifies that penalty enhancements for prostitution conduct committed in return for receipt of a fee result from

subsequent convictions of that specific conduct and that penalty enhancements for prostitution conduct committed based on the payment of a fee by the actor or another result from subsequent convictions of that specific conduct. The bill makes the state jail felony enhancement for prostitution and the second degree felony enhancement for soliciting a person younger than 18 years of age applicable only to prostitution conduct committed based on the payment of a fee by the actor or another. The bill limits applicability of the defense to prosecution for prostitution to conduct committed in return for receipt of a fee and expands the circumstances constituting that defense to include that the actor engaged in that conduct because the actor was a victim of a compelling prostitution offense.

C.S.H.B. 3326 amends the Health and Safety Code to decrease the penalty for possession of one ounce or less of marihuana from a Class B misdemeanor to a Class C misdemeanor and to establish the minimum threshold amount of marihuana possessed under the Class B misdemeanor at more than one ounce of marihuana. The bill decreases from a state jail felony to a Class A misdemeanor the penalty for knowingly or intentionally possessing a controlled substance listed in Penalty Group 1 of the Texas Controlled Substances Act in an amount, by aggregate weight, including adulterants or dilutants, of less than one gram and enhances the penalty for such an offense to a state jail felony if the person has been previously convicted of an offense of possession of marihuana or of a substance in Penalty Group 1, 1-A, 2, 2-A, 3, or 4. The bill includes such an enhanced offense and the Class C misdemeanor marihuana possession offense within the scope of statutory provisions relating to increased punishments for certain offenses committed in drug free zones.

C.S.H.B. 3326 changes the prostitution conduct for which the commissioners court of a county or governing body of a municipality may establish a first offender prostitution prevention program for defendants from conduct involving the solicitation of another in a public place to engage with the actor in sexual conduct for hire to any prostitution conduct committed based on the payment of a fee by the actor or another. The bill changes the prostitution conduct for which such a commissioners court or governing body may establish a prostitution prevention program for defendants from conduct involving offering to engage, agreeing to engage, or engaging in sexual conduct for a fee to any prostitution conduct committed in return for receipt of a fee.

C.S.H.B. 3326 amends the Family Code to change the prostitution conduct that constitutes abuse, for purposes of an investigation of a report of child abuse, from compelling or encouraging a child through solicitation in a public place to engage in sexual conduct for hire to compelling or encouraging a child to engage in prostitution conduct based on the payment of a fee by the actor or another person on the actor's behalf. The bill changes the prostitution conduct constituting conduct indicating a need for supervision under the juvenile justice code from knowingly offering to engage, agreeing to engage, or engaging in sexual conduct for a fee, or soliciting another in a public place to engage with the person in sexual conduct for hire to any prostitution conduct committed in return for receipt of a fee or based on the payment of a fee by the actor or another person on the actor's behalf, as applicable.

C.S.H.B. 3326 requires the Texas Department of Criminal Justice (TDCJ), not later than December 1 of each year, to report to the legislature on the financial impact to the state during the preceding state fiscal year of reducing penalties under the bill's provisions and requires the report to include an analysis of incarceration costs incurred by the state and local governments, including the cost of constructing prisons and jails. The bill requires the comptroller of public accounts to verify the TDCJ findings in analyzing the cost savings realized by the state under the bill's provisions and authorizes TDCJ to retain the amount of the actual savings attributable to implementation of the bill's provisions, to the extent that the savings come from funds appropriated to TDCJ and to the extent TDCJ distributed that amount to programs or facilities for the supervision and rehabilitation of offenders. The bill authorizes TDCJ to transfer savings attributable to implementation of the bill's provisions from the first year of the fiscal biennium to the second year of the fiscal biennium, provided that TDCJ uses the full amount transferred for distribution to programs or facilities for the supervision and rehabilitation of offenders.

C.S.H.B. 3326 amends the Business & Commerce Code and Code of Criminal Procedure to make conforming changes.

C.S.H.B. 3326 repeals Section 32.21(d), Penal Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3326 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 2. Article 14.06(d), Code of Criminal Procedure, is amended to read as follows:

(d) Subsection (c) applies only to a person charged with committing an offense under:

(1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(2) or (3) [~~(b)(1) or (2)~~] of that section;

(1-a) Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(2) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(2) [~~(b)(1)~~] of that section;

(4) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(6) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7) Section 521.457, Transportation Code.

No equivalent provision.

SECTION 4. Section 51.03(b), Family Code, is amended to read as follows:

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine

- only; or
- (B) the penal ordinances of any political subdivision of this state;
 - (2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;
 - (3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;
 - (4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;
 - (5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code;
 - (6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305;
 - (7) notwithstanding Subsection (a)(1), conduct described by Section 43.02(a) or (b) [~~43.02(a)(1) or (2)~~], Penal Code; or
 - (8) notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.

No equivalent provision.

SECTION 5. Section 261.001(1), Family Code, is amended to read as follows:

- (1) "Abuse" includes the following acts or omissions by a person:
 - (A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - (B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - (C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a

parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner [~~conduct~~] that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b) [~~43.02(a)(2)~~], Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner

punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.

No equivalent provision.

SECTION 6. 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(b) [~~43.02(a)(2)~~], Penal Code[, ~~in which the defendant offered or agreed to hire a person to engage in sexual conduct~~].

No equivalent provision.

SECTION 7. Section 169A.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 prostitution prevention program for defendants charged with an offense under Section 43.02(a) [~~43.02(a)(1)~~], Penal Code[, ~~in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee~~].

SECTION 1. Section 481.121, Health and Safety Code, is amended.

SECTION 9. Same as introduced version except for recitation.

SECTION 2. Section 15(a)(1), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a)(1) On conviction of a state jail felony under Section [~~481.115(b)~~] 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision, unless the defendant has previously been convicted of a felony, other than a felony punished under Section 12.44(a), Penal Code, or unless the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense, in which event the judge may suspend the imposition of the sentence and place the defendant on community supervision or may

SECTION 3. Section 15(a)(1), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(1) On conviction of a state jail felony under Section 481.115(b-1) [~~481.115(b)~~], 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(4) [~~481.121(b)(3)~~], or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision, unless the defendant has previously been convicted of a felony, other than a felony punished under Section 12.44(a), Penal Code, or unless the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense, in which event the judge may suspend the imposition of

order the sentence to be executed. The provisions of this subdivision requiring the judge to suspend the imposition of the sentence and place the defendant on community supervision do not apply to a defendant who:

- (A) under Section 481.1151(b)(1), Health and Safety Code, possessed more than five abuse units of the controlled substance;
- (B) under Section 481.1161(b)(3), Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or
- (C) under Section 481.121(b)(3), Health and Safety Code, possessed more than one pound of marihuana.

SECTION 3. Section 481.115(b), Health and Safety Code, is amended to read as follows:

(b) An offense under Subsection (a) is a Class A misdemeanor [~~state jail felony~~] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

No equivalent provision.

the sentence and place the defendant on community supervision or may order the sentence to be executed. The provisions of this subdivision requiring the judge to suspend the imposition of the sentence and place the defendant on community supervision do not apply to a defendant who:

- (A) under Section 481.1151(b)(1), Health and Safety Code, possessed more than five abuse units of the controlled substance;
- (B) under Section 481.1161(b)(3), Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or
- (C) under Section 481.121(b)(4) [~~481.121(b)(3)~~], Health and Safety Code, possessed more than one pound of marihuana.

SECTION 8. Section 481.115, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), an [~~An~~] offense under Subsection (a) is a Class A misdemeanor [~~state jail felony~~] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(b-1) An offense punishable under Subsection (b) is a state jail felony if the person has been previously convicted of an offense under this section or Section 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121.

SECTION 10. Section 481.126(a), Health and Safety Code, is amended to read as follows:

- (a) A person commits an offense if the person:
 - (1) barter property or expends funds the person knows are derived from the commission of an offense under this chapter punishable by imprisonment in the Texas Department of Criminal Justice for life;
 - (2) barter property or expends funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(6) [~~481.121(b)(5)~~];

(3) barter property or finances or invests funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or

(4) barter property or finances or invests funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(6) [~~481.121(b)(5)~~].

No equivalent provision.

SECTION 11. Sections 481.134(c), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(5), (6), or (7) [~~481.121(b)(4), (5), or (6)~~] is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(d) An offense otherwise punishable under Section 481.112(b), 481.113(b), 481.114(b), 481.115(b-1) [~~481.115(b)~~], 481.116(b), 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(4) [~~481.121(b)(3)~~] is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(e) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3) [~~481.121(b)(2)~~] is a state jail felony if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to

a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(f) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) or (2) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

SECTION 4. Section 28.03(b), Penal Code, is amended.

SECTION 5. Sections 28.08(b) and (d), Penal Code, are amended.

SECTION 6. Section 30.02(c), Penal Code, is amended.

SECTION 7. Section 31.03(e), Penal Code, is amended.

SECTION 8. Sections 31.04(b) and (e), Penal Code, are amended.

SECTION 9. Section 32.21(c), Penal Code, is amended.

SECTION 10. Section 32.31(d), Penal Code, is amended.

SECTION 11. Section 32.51(c), Penal Code, is amended.

SECTION 12. Section 43.02(c), Penal Code, is amended to read as follows:

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Same as introduced version.

SECTION 19. Same as introduced version.

SECTION 20. Section 43.02, Penal Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsections (b-1) and (c-1) to read as follows:

(a) A person commits an offense if, in return for receipt of a fee, the person knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct [~~for a fee~~]; or

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

(b) A person commits an offense if, based on the payment of a fee by the actor or

~~another person on behalf of the actor, the person knowingly:~~

~~(1) offers to engage, agrees to engage, or engages in sexual conduct; or~~

~~(2) solicits another in a public place to engage with the actor in sexual conduct for hire.~~

~~(b-1) An offense is established under Subsection (a) regardless of [(a)(1)] whether the actor is offered or actually receives the [is to receive or pay a] fee. An offense is established under Subsection (b) regardless of [(a)(2)] whether the actor or another person on behalf of the actor offers or actually pays the fee [solicits a person to hire the actor or offers to hire the person solicited].~~

~~(c) An offense under Subsection (a) [this section] is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted one or more times of an offense under that subsection.~~

~~(c-1) An offense under Subsection (b) is a Class B misdemeanor, except that the offense is:~~

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

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

~~(3) a felony of the second degree if the person solicited is younger than 18 years of age, regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense.~~

~~(d) It is a defense to prosecution for an offense under Subsection (a) [under this section] that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02 or 43.05.~~

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

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

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

~~[(3)]~~ a felony of the second degree if the person solicited is younger than 18 years of age, regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense.

SECTION 13. Section 502.001(c), Business & Commerce Code, is amended.

SECTION 14. Section 32.21(d), Penal Code, is repealed.

No equivalent provision.

SECTION 1. Same as introduced version.

SECTION 21. Same as introduced version.

SECTION 22. (a) Not later than December 1 of each year, the Texas

Department of Criminal Justice shall report to the legislature on the financial impact to the state during the preceding state fiscal year of reducing penalties under this Act.

(b) The report must include an analysis of incarceration costs incurred by the state and local governments, including the cost of constructing prisons and jails.

(c) The comptroller shall verify the findings of the Texas Department of Criminal Justice in analyzing the cost savings realized by the state under this Act. The Texas Department of Criminal Justice may retain the amount of the actual savings attributable to implementation of this Act, to the extent that the savings come from funds appropriated to the department and to the extent the department distributed that amount to programs or facilities for the supervision and rehabilitation of offenders. The Texas Department of Criminal Justice may transfer savings attributable to implementation of this Act from the first year of the fiscal biennium to the second year of the fiscal biennium, provided that the department uses the full amount transferred for distribution to programs or facilities for the supervision and rehabilitation of offenders.

SECTION 15. The change in law made by this Act applies to an offense committed before, on, or after the effective date of this Act, except that a final conviction that exists on the effective date of this Act is unaffected by this Act.

SECTION 23. The changes in law made by this Act apply 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 16. This Act takes effect September 1, 2015.

SECTION 24. Same as introduced version.