

BILL ANALYSIS

Senate Research Center

S.B. 825
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Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are typically three distinct parties involved in the crime of prostitution: the pimp, the prostitute, and the purchaser. Texas law recognizes the unique role of pimps and other facilitators of commercial sex through its promotion of prostitution statutes (Section 43.03 and Section 43.04 of the Penal Code) and compelling prostitution statutes (Section 43.05 of the Penal Code), but the current statutory framework provides no distinction between the buyer and seller. Both the buyer and the prostituted individual are guilty of the same prostitution offense (Section 43.02 of the Penal Code). S.B. 825 makes this distinction.

One valuable measurement of the demand for commercial sex is the number of individuals arrested or charged with purchasing or attempting to purchase sex. As Texas moves toward an increasingly victim-centric and survivor-informed approach to sexual exploitation and sex trafficking, it is important to distinguish the roles of the buyers and sellers. Conflating the roles of buyers and prostituted individuals gives an unclear picture of the various parties involved in this criminal enterprise.

S.B. 825 seeks to create a distinction between buyers and sellers of commercial sex by splitting the current prostitution statute into two separate offenses depending upon whether the party is to pay a fee (buyer) or receive a fee (seller) in exchange for sexual conduct.

S.B. 825 amends current law relating to the prosecution of the offense of prostitution.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 43.02, Penal Code, by amending Subsections (a), (b), (c), and (d) and adding Subsection (b-1) and (c-1), as follows:

(a) Provides that 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, rather than sexual conduct for a fee; or

(2) solicits another in a public place to engage with the actor, rather than person, in sexual conduct for hire.

(b) Provides that 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) Creates this subsection from existing text. Provides that an offense is established under Subsection (a) regardless of whether the actor is offered or actually receives the fee. Provides that an offense is established under Subsection (b) regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee. Deletes existing text providing that an offense is established under Subsection (a)(1) whether the actor is to receive or pay a fee. Deletes existing text providing that an offense is established under Subsection (a)(2) whether the actor solicits a person to hire the actor or offers to hire the person solicited.

(c) Provides that an offense under Subsection (a), rather than 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 Subsection (a), rather than under this section; or

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (a).

(c-1) Provides that 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 Subsection (b);

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

(3) Makes no change to this subdivision.

(d) Provides that it is a defense to prosecution for an offense under Subsection (a), rather than 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.

SECTION 2. Amends Section 43.05, Penal Code, by adding Subsection (c) to provide that if conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

SECTION 3. Amends Section 51.03(b), Family Code, to provide that conduct indicating a need for supervision is, notwithstanding Subsection (a)(1), conduct described by Section 43.02(a) or (b), Penal Code, rather than Section 43.02(a)(1) or (2), Penal Code, among certain conduct as set forth in this subsection.

SECTION 4. Amends Section 261.001(1), Family Code, to redefine "abuse" to include compelling or encouraging the child in a manner that constitutes a certain offense, rather than conduct that constitutes such offense, and to change a reference to Section 43.02(a)(2), Penal Code, to Section 43.02(b), Penal Code.

SECTION 5. Amends Section 169.002(a), Health and Safety Code, to authorize the commissioners court of a county or governing body of a municipality to establish a first offender prostitution prevention program for defendants charged with an offense under Section 43.02(b), Penal Code, rather than Section 43.02(a)(2), Penal Code, in which the defendant offered or agreed to hire a person to engage in sexual conduct.

SECTION 6. Amends Section 169A.002(a), Health and Safety Code, to authorize the commissioners court of a county or governing body of a municipality to establish a prostitution prevention program for defendants charged with an offense under Section 43.02(a), Penal Code,

rather than under Section 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 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2015.