

By: Huffman, Garcia

S.B. No. 825

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of the offense of prostitution.

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

SECTION 1. 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

1 pays the fee [~~solicits a person to hire the actor or offers to hire~~
2 ~~the person solicited~~].

3 (c) An offense under Subsection (a) [~~this section~~] is a
4 Class B misdemeanor, except that the offense is:

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

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

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

13 (1) a Class A misdemeanor if the actor has previously
14 been convicted one or two times of an offense under Subsection (b);

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

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

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

27 SECTION 2. Section [43.05](#), Penal Code, is amended by adding

1 Subsection (c) to read as follows:

2 (c) If conduct constituting an offense under this section
3 also constitutes an offense under another section of this code, the
4 actor may be prosecuted under either section or under both
5 sections.

6 SECTION 3. Section 51.03(b), Family Code, is amended to
7 read as follows:

8 (b) Conduct indicating a need for supervision is:

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

11 (A) the penal laws of this state of the grade of
12 misdemeanor that are punishable by fine only; or

13 (B) the penal ordinances of any political
14 subdivision of this state;

15 (2) the absence of a child on 10 or more days or parts
16 of days within a six-month period in the same school year or on
17 three or more days or parts of days within a four-week period from
18 school;

19 (3) the voluntary absence of a child from the child's
20 home without the consent of the child's parent or guardian for a
21 substantial length of time or without intent to return;

22 (4) conduct prohibited by city ordinance or by state
23 law involving the inhalation of the fumes or vapors of paint and
24 other protective coatings or glue and other adhesives and the
25 volatile chemicals itemized in Section 485.001, Health and Safety
26 Code;

27 (5) an act that violates a school district's

1 previously communicated written standards of student conduct for
2 which the child has been expelled under Section 37.007(c),
3 Education Code;

4 (6) conduct that violates a reasonable and lawful
5 order of a court entered under Section 264.305;

6 (7) notwithstanding Subsection (a)(1), conduct
7 described by Section 43.02(a) or (b) [~~43.02(a)(1) or (2)~~], Penal
8 Code; or

9 (8) notwithstanding Subsection (a)(1), conduct that
10 violates Section 43.261, Penal Code.

11 SECTION 4. Section 261.001(1), Family Code, is amended to
12 read as follows:

13 (1) "Abuse" includes the following acts or omissions
14 by a person:

15 (A) mental or emotional injury to a child that
16 results in an observable and material impairment in the child's
17 growth, development, or psychological functioning;

18 (B) causing or permitting the child to be in a
19 situation in which the child sustains a mental or emotional injury
20 that results in an observable and material impairment in the
21 child's growth, development, or psychological functioning;

22 (C) physical injury that results in substantial
23 harm to the child, or the genuine threat of substantial harm from
24 physical injury to the child, including an injury that is at
25 variance with the history or explanation given and excluding an
26 accident or reasonable discipline by a parent, guardian, or
27 managing or possessory conservator that does not expose the child

1 to a substantial risk of harm;

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

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

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

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

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

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

1 emotional injury to a child;

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

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

8 (L) knowingly causing, permitting, encouraging,
9 engaging in, or allowing a child to be trafficked in a manner
10 punishable as an offense under Section 20A.02(a)(5), (6), (7), or
11 (8), Penal Code, or the failure to make a reasonable effort to
12 prevent a child from being trafficked in a manner punishable as an
13 offense under any of those sections.

14 SECTION 5. Section 169.002(a), Health and Safety Code, is
15 amended to read as follows:

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

21 SECTION 6. Section 169A.002(a), Health and Safety Code, is
22 amended to read as follows:

23 (a) The commissioners court of a county or governing body of
24 a municipality may establish a prostitution prevention program for
25 defendants charged with an offense under Section 43.02(a)
26 [~~43.02(a)(1)~~], Penal Code [~~, in which the defendant offered or~~
27 ~~agreed to engage in or engaged in sexual conduct for a fee~~].

1 SECTION 7. The changes in law made by this Act to Section
2 43.02, Penal Code, apply only to an offense committed on or after
3 the effective date of this Act. An offense committed before the
4 effective date of this Act is governed by the law in effect when the
5 offense was committed, and the former law is continued in effect for
6 that purpose. For purposes of this section, an offense was
7 committed before the effective date of this Act if any element of
8 the offense occurred before that date.

9 SECTION 8. This Act takes effect September 1, 2015.