

BILL ANALYSIS

C.S.H.B. 2960
By: Parker
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note the high incidence of human trafficking and sexual offenses in Texas and contend that the penalties for certain of these offenses are not strong enough and that a defendant should be prosecuted for certain of these offenses committed against a minor or child victim regardless of whether the defendant knows the age of the victim at the time of the offense. C.S.H.B. 2960 seeks to establish stronger penalties and provide for that prosecution.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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. 2960 amends the Penal Code to establish that an actor who engages in the conduct constituting the following offenses commits the applicable offense regardless of whether the actor knows the age of the victim at the time of the offense: continuous sexual abuse of a young child or children, indecency with a child, sexual assault of a child, aggravated sexual assault of a child, online solicitation of a minor, online solicitation of a minor offense enhanced to a second degree felony because the minor is younger than 14 years of age, sexual performance by a child, and employment harmful to children.

C.S.H.B. 2960 expands the substances the administration or provision of which constitutes an aggravated sexual assault offense if the actor has the requisite intent to include any substance capable of impairing the victim's ability to appreciate the nature of the applicable unlawful sexual conduct or to resist the conduct.

C.S.H.B. 2960 removes the condition that an actor's solicitation of another to engage with the actor in sexual conduct occur in a public place or be for hire in order for such conduct to constitute a prostitution offense. The bill increases the penalty for an offense of prostitution based on the payment of a fee by the actor or another person on behalf of the actor from a Class B misdemeanor to a Class A misdemeanor, from a Class A misdemeanor to a state jail felony for an actor who has previously been convicted one or two times of the offense, from a state jail felony to a third degree felony for an actor who has previously been convicted three or more times of the offense, and from a second degree felony to a first degree felony if the person solicited is younger than 18 years of age or is represented to the actor as being, or is believed by the actor to be, younger than 18 years of age.

C.S.H.B. 2960 expands the conduct that constitutes promotion of prostitution to include procuring another to engage in sexual conduct with another person for compensation, providing a person or premises for prostitution purposes, operating or assisting in the operation of a prostitution enterprise, or engaging in other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution. The bill establishes that a conviction for promotion of prostitution may be used for purposes of enhancement under provisions relating to the offense or enhancement under provisions relating to exceptional sentences but not under both sets of provisions. The bill establishes that for purposes of enhancement of penalties under either set of provisions, a defendant is previously convicted of a promotion of prostitution offense if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication community supervision, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from deferred adjudication community supervision. The bill authorizes the prosecution of an actor, if the actor's conduct constitutes promotion of prostitution and also constitutes another Penal Code offense, for either or both of the offenses.

C.S.H.B. 2960 changes the conduct that constitutes aggravated promotion of prostitution from knowingly owning, investing in, financing, controlling, supervising, or managing a prostitution enterprise that uses two or more prostitutes to engaging in conduct that constitutes promotion of prostitution if the person engages in the conduct with respect to two or more prostitutes or the person while engaged in the conduct causes serious bodily injury to another or uses or exhibits a deadly weapon. The bill clarifies that the penalty for aggravated promotion of prostitution is enhanced from a third degree felony to a first degree felony for an actor who engages in the conduct with respect to two or more prostitutes and whose conduct involves the use of one or more persons younger than 18 years of age as a prostitute, regardless of whether the actor knows the age of the person at the time of the offense.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2960 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	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 20A.02(b), Penal Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 21.02(b), Penal Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 21.11(a), Penal Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 22.011(a), Penal Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Section 22.021(a), Penal Code, is amended to read as follows: (a) A person commits an offense:	SECTION 5. Section 22.021(a), Penal Code, is amended to read as follows: (a) A person commits an offense:

(1) if the person:
(A) intentionally or knowingly:
(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
(B) regardless of whether the person knows the age of the child at the time of the offense, intentionally or knowingly:
(i) causes the penetration of the anus or sexual organ of a child by any means;
(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;
(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and
(2) if:
(A) the person:
(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;
(ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;
(iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;
(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;
(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(1) if the person:
(A) intentionally or knowingly:
(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
(B) regardless of whether the person knows the age of the child at the time of the offense, intentionally or knowingly:
(i) causes the penetration of the anus or sexual organ of a child by any means;
(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;
(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and
(2) if:
(A) the person:
(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;
(ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;
(iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;
(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;
(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense; or

(C) the victim is an elderly individual or a disabled individual.

SECTION 6. Section 33.021(a)(1), Penal Code, is amended.

SECTION 7. Section 33.021(f), Penal Code, is amended.

SECTION 8. Section 43.01, Penal Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Item of value" means money or a good, service, or object that functions as consideration.

SECTION 9. Section 43.02, Penal Code, as amended by Chapters 332 (H.B. 10) and 1273 (S.B. 825), Acts of the 84th Legislature, Regular Session, 2015, is amended by amending Subsections (a), (b), and (b-1), reenacting Subsection (c), and reenacting and amending Subsection (c-1) to read as follows:

(a) A person commits an offense if, in return for receipt of an item of value [a fee], 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) A person commits an offense if, based on the exchange [payment] of an item of value [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

(vi) with the intent of facilitating the commission of the offense, administers or provides [flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine] to the victim of the offense any substance capable of impairing the victim's ability to appreciate the nature of the applicable conduct described by Subdivision (1) or to resist the conduct ~~[with the intent of facilitating the commission of the offense]~~;

(B) the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense; or

(C) the victim is an elderly individual or a disabled individual.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

No equivalent provision.

SECTION 8. Section 43.02, Penal Code, as amended by Chapters 332 (H.B. 10) and 1273 (S.B. 825), Acts of the 84th Legislature, Regular Session, 2015, is amended by amending Subsections (a) and (b), reenacting Subsection (c), and reenacting and amending Subsection (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; or

(2) solicits another ~~[in a public place]~~ to engage with the actor 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 whether the actor is offered or actually receives the item of value [~~fee~~]. An offense is established under Subsection (b) regardless of whether the actor or another person on behalf of the actor offers or actually exchanges the item of value [~~pays the fee~~].

(c) An offense under Subsection (a) 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); 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) An offense under Subsection (b) is a Class A [~~B~~] misdemeanor, except that the offense is:

(1) a state jail felony [~~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 of the third degree if the actor has previously been convicted three or more times of an offense under Subsection (b); or

(3) a felony of the second degree if the person solicited is:

(A) younger than 18 years of age, regardless of whether the actor knows the age of the person solicited at the time of [~~the actor commits~~] the offense;

(B) represented to the actor as being younger than 18 years of age; or

(C) believed by the actor to be younger than 18 years of age.

SECTION 10. Section 43.03, Penal Code, is amended to read as follows:

Sec. 43.03. PROMOTION OF PROSTITUTION. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the actor [~~he or she~~] knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; [~~or~~]

(2) solicits or procures another to engage in sexual conduct with another person for compensation;

engage with the actor in sexual conduct [~~for hire~~].

(c) An offense under Subsection (a) 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); 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) An offense under Subsection (b) is a Class A [~~B~~] misdemeanor, except that the offense is:

(1) a state jail felony [~~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 of the third degree if the actor has previously been convicted three or more times of an offense under Subsection (b); or

(3) a felony of the first [~~second~~] degree if the person solicited is:

(A) younger than 18 years of age, regardless of whether the actor knows the age of the person solicited at the time of [~~the actor commits~~] the offense;

(B) represented to the actor as being younger than 18 years of age; or

(C) believed by the actor to be younger than 18 years of age.

SECTION 9. Section 43.03, Penal Code, is amended to read as follows:

Sec. 43.03. PROMOTION OF PROSTITUTION. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the actor [~~he or she~~] knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; [~~or~~]

(2) solicits or procures another to engage in sexual conduct with another person for compensation;

(3) provides a person or premises for prostitution purposes;
(4) operates or assists in the operation of a prostitution enterprise; or
(5) engages in other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

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

(1) a state jail felony if the actor has been previously convicted of an offense under this section; or

(2) a felony of the second degree if the actor engages in conduct described by Subsection (a) [~~(a)(1) or (2)~~] involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of [the actor commits] the offense.

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

SECTION 11. Section 43.04, Penal Code, is amended.

SECTION 12. Section 43.05(a), Penal Code, is amended.

SECTION 13. Section 43.25, Penal Code, is amended.

SECTION 14. Section 43.251, Penal Code, is amended.

(3) provides a person or premises for prostitution purposes;

(4) operates or assists in the operation of a prostitution enterprise; or

(5) engages in other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

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

(1) a state jail felony if the actor has been previously convicted of an offense under this section; or

(2) a felony of the second degree if the actor engages in conduct described by Subsection (a) [~~(a)(1) or (2)~~] involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of [the actor commits] the offense.

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

(d) 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 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 15. 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, 2017.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.