

By: Johnson of Dallas

H.B. No. 1218

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of and punishment for the offense of prostitution.

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

SECTION 1. 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 reenacting and amending Subsection (c) and reenacting Subsection (c-1) to read as follows:

(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 three, four, or five ~~[one or two]~~ times of an offense under Subsection (a); or

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

(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 Subsection (b);

(2) a state jail felony 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 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 2. Chapter 32, Code of Criminal Procedure, is amended by adding Article 32.03 to read as follows:

Art. 32.03. DISMISSAL OF CERTAIN PROSTITUTION OFFENSES. At any time before trial commences for an offense under Section 43.02, Penal Code, a court may, on the request of the defendant and with the consent of the attorney representing the state, defer proceedings without entering an adjudication of guilt and permit the defendant to participate in a commercially sexually exploited persons court program established under Chapter 126, Government Code, or in a first offender prostitution prevention program established under Chapter 169, Health and Safety Code, if the defendant is otherwise eligible to participate in the program under the applicable chapter. If the defendant successfully completes the commercially sexually exploited persons court program or prostitution prevention program, the court may dismiss the proceedings against the defendant and discharge the defendant.

SECTION 3. Article 62.001(5), Code of Criminal Procedure, is amended to read as follows:

1 (5) "Reportable conviction or adjudication" means a
2 conviction or adjudication, including an adjudication of
3 delinquent conduct or a deferred adjudication, that, regardless of
4 the pendency of an appeal, is a conviction for or an adjudication
5 for or based on:

6 (A) a violation of Section 21.02 (Continuous
7 sexual abuse of young child or children), 21.11 (Indecency with a
8 child), 22.011 (Sexual assault), 22.021 (Aggravated sexual
9 assault), or 25.02 (Prohibited sexual conduct), Penal Code;

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

13 (B-1) a violation of Section 43.02
14 (Prostitution), Penal Code, if the offense is punishable under
15 Subsection (c-1)(3) [~~(c)(3)~~] of that section;

16 (C) a violation of Section 20.04(a)(4)
17 (Aggravated kidnapping), Penal Code, if the actor committed the
18 offense or engaged in the conduct with intent to violate or abuse
19 the victim sexually;

20 (D) a violation of Section 30.02 (Burglary),
21 Penal Code, if the offense or conduct is punishable under
22 Subsection (d) of that section and the actor committed the offense
23 or engaged in the conduct with intent to commit a felony listed in
24 Paragraph (A) or (C);

25 (E) a violation of Section 20.02 (Unlawful
26 restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping),
27 Penal Code, if, as applicable:

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

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

6 (F) the second violation of Section 21.08
7 (Indecent exposure), Penal Code, but not if the second violation
8 results in a deferred adjudication;

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

12 (H) a violation of the laws of another state,
13 federal law, the laws of a foreign country, or the Uniform Code of
14 Military Justice for or based on the violation of an offense
15 containing elements that are substantially similar to the elements
16 of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E),
17 (G), (J), or (K), but not if the violation results in a deferred
18 adjudication;

19 (I) the second violation of the laws of another
20 state, federal law, the laws of a foreign country, or the Uniform
21 Code of Military Justice for or based on the violation of an offense
22 containing elements that are substantially similar to the elements
23 of the offense of indecent exposure, but not if the second violation
24 results in a deferred adjudication;

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

27 (K) a violation of Section 20A.02(a)(3), (4),

(7), or (8) (Trafficking of persons), Penal Code.

SECTION 4. Section 126.001(a), Government Code, is amended to read as follows:

(a) In this chapter, "commercially sexually exploited persons court program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to information, counseling, and services relating to commercial sexual exploitation, trafficking of persons, sex addiction, sexually transmitted diseases, mental health, and substance abuse;

(5) a coordinated strategy to govern program responses to participant compliance;

(6) monitoring and evaluation of program goals and effectiveness;

(7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(8) development of partnerships with public agencies and community organizations.

SECTION 5. Section 126.004(a), Government Code, is amended to read as follows:

(a) A commercially sexually exploited persons court program established under this chapter must:

(1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide each participant with information, counseling, and services relating to commercial sexual exploitation, trafficking of persons, sex addiction, sexually transmitted diseases, mental health, and substance abuse; and

(4) provide each participant with instruction related to the prevention of prostitution.

SECTION 6. Section 402.035(d), Government Code, as amended by Chapters 146 (H.B. 188) and 332 (H.B. 10), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(d) The task force shall:

(1) collaborate, as needed to fulfill the duties of the task force, with:

(A) United States attorneys' offices [~~Attorneys' Offices~~] for all of the federal districts of Texas; and

(B) special agents or customs and border protection officers and border patrol agents of:

(i) the Federal Bureau of Investigation;

(ii) the United States Drug Enforcement Administration;

(iii) the Bureau of Alcohol, Tobacco, Firearms and Explosives;

(iv) United States Immigration and Customs Enforcement; or

(v) the United States Department of Homeland Security;

(2) collect, organize, and periodically publish statistical data on the nature and extent of human trafficking in this state, including data described by Subdivisions (4)(A), (B), (C), (D), and (E);

(3) solicit cooperation and assistance from state and local governmental agencies, political subdivisions of the state, nongovernmental organizations, and other persons, as appropriate, for the purpose of collecting and organizing statistical data under Subdivision (2);

(4) ensure that each state or local governmental agency and political subdivision of the state and each state or local law enforcement agency, district attorney, or county attorney that assists in the prevention of human trafficking collects statistical data related to human trafficking, including, as appropriate:

(A) the number of investigations concerning, arrests and prosecutions for, and convictions of:

(i) the offense of trafficking of persons;

(ii) the offense of forgery or an offense

under Chapter 43, Penal Code, if the offense was committed as part of a criminal episode involving the trafficking of persons; and

(iii) an offense punishable under Section 43.02(c-1)(3) [~~43.02(c)(3)~~], Penal Code, regardless of whether the offense was committed as part of a criminal episode involving the trafficking of persons;

(B) demographic information on persons who are convicted of offenses described by Paragraph (A) and persons who are the victims of those offenses;

(C) geographic routes by which human trafficking victims are trafficked, including routes by which victims are trafficked across this state's international border, and geographic patterns in human trafficking, including the country or state of origin and the country or state of destination;

(D) means of transportation and methods used by persons who engage in trafficking to transport their victims; and

(E) social and economic factors that create a demand for the labor or services that victims of human trafficking are forced to provide;

(5) work with the Texas Commission on Law Enforcement to develop and conduct training for law enforcement personnel, victim service providers, and medical service providers to identify victims of human trafficking;

(6) work with the Texas Education Agency, the Department of Family and Protective Services, and the Health and Human Services Commission to:

(A) develop a list of key indicators that a

1 person is a victim of human trafficking;

2 (B) develop a standardized curriculum for
3 training doctors, nurses, emergency medical services personnel,
4 teachers, school counselors, school administrators, and personnel
5 from the Department of Family and Protective Services and the
6 Health and Human Services Commission to identify and assist victims
7 of human trafficking;

8 (C) train doctors, nurses, emergency medical
9 services personnel, teachers, school counselors, school
10 administrators, and personnel from the Department of Family and
11 Protective Services and the Health and Human Services Commission to
12 identify and assist victims of human trafficking;

13 (D) develop and conduct training for personnel
14 from the Department of Family and Protective Services and the
15 Health and Human Services Commission on methods for identifying
16 children in foster care who may be at risk of becoming victims of
17 human trafficking; and

18 (E) develop a process for referring identified
19 human trafficking victims and individuals at risk of becoming
20 victims to appropriate entities for services;

21 (7) on the request of a judge of a county court, county
22 court at law, or district court or a county attorney, district
23 attorney, or criminal district attorney, assist and train the judge
24 or the judge's staff or the attorney or the attorney's staff in the
25 recognition and prevention of human trafficking;

26 (8) examine training protocols related to human
27 trafficking issues, as developed and implemented by federal, state,

1 and local law enforcement agencies;

2 (9) collaborate with state and local governmental
3 agencies, political subdivisions of the state, and nongovernmental
4 organizations to implement a media awareness campaign in
5 communities affected by human trafficking;

6 (10) develop recommendations on how to strengthen
7 state and local efforts to prevent human trafficking, protect and
8 assist human trafficking victims, curb markets and other economic
9 avenues that facilitate human trafficking and investigate and
10 prosecute human trafficking offenders;

11 (11) examine the extent to which human trafficking is
12 associated with the operation of sexually oriented businesses, as
13 defined by Section 243.002, Local Government Code, and the
14 workplace or public health concerns that are created by the
15 association of human trafficking and the operation of sexually
16 oriented businesses; ~~and~~

17 (12) develop recommendations for addressing the
18 demand for forced labor or services or sexual conduct involving
19 victims of human trafficking, including recommendations for
20 increased penalties for individuals who engage or attempt to engage
21 in prostitution with victims younger than 18 years of age; and

22 (13) ~~[(12)]~~ identify and report to the governor and
23 legislature on laws, licensure requirements, or other regulations
24 that can be passed at the state and local level to curb trafficking
25 using the Internet and in sexually oriented businesses.

26 SECTION 7. Section 169.001(a), Health and Safety Code, is
27 amended to read as follows:

1 (a) In this chapter, "first offender prostitution
2 prevention program" means a program that has the following
3 essential characteristics:

4 (1) the integration of services in the processing of
5 cases in the judicial system;

6 (2) the use of a nonadversarial approach involving
7 prosecutors and defense attorneys to promote public safety, to
8 reduce the demand for the commercial sex trade and trafficking of
9 persons by educating offenders, and to protect the due process
10 rights of program participants;

11 (3) early identification and prompt placement of
12 eligible participants in the program;

13 (4) access to information, counseling, and services
14 relating to commercial sexual exploitation, trafficking of
15 persons, sex addiction, sexually transmitted diseases, mental
16 health, and substance abuse;

17 (5) a coordinated strategy to govern program responses
18 to participant compliance;

19 (6) monitoring and evaluation of program goals and
20 effectiveness;

21 (7) continuing interdisciplinary education to promote
22 effective program planning, implementation, and operations; and

23 (8) development of partnerships with public agencies
24 and community organizations.

25 SECTION 8. Section 169.003(a), Health and Safety Code, is
26 amended to read as follows:

27 (a) A first offender prostitution prevention program

1 established under this chapter must:

2 (1) ensure that a person eligible for the program is
3 provided legal counsel before volunteering to proceed through the
4 program and while participating in the program;

5 (2) allow any participant to withdraw from the program
6 at any time before a trial on the merits has been initiated;

7 (3) provide each participant with information,
8 counseling, and services relating to commercial sexual
9 exploitation, trafficking of persons, sex addiction, sexually
10 transmitted diseases, mental health, and substance abuse; and

11 (4) provide each participant with classroom
12 instruction related to the prevention of prostitution.

13 SECTION 9. The change in law made by this Act applies only
14 to an offense committed on or after the effective date of this Act.
15 An offense committed before the effective date of this Act is
16 governed by the law in effect on the date the offense was committed,
17 and the former law is continued in effect for that purpose. For
18 purposes of this section, an offense was committed before the
19 effective date of this Act if any element of the offense occurred
20 before that date.

21 SECTION 10. To the extent of any conflict, this Act prevails
22 over another Act of the 85th Legislature, Regular Session, 2017,
23 relating to nonsubstantive additions to and corrections in enacted
24 codes.

25 SECTION 11. This Act takes effect September 1, 2017.