87R17249 ADM-F

By:  Meyer, Hunter, A. Johnson of Harris H.B. No. 3111

A BILL TO BE ENTITLED

AN ACT

relating to the criminal offense of online solicitation relating to a minor; creating a criminal offense; changing eligibility for community supervision.

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

ARTICLE 1. ONLINE SOLICITATION RELATING TO A MINOR

SECTION 1.01.  Article 42A.054(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Article 42A.053 does not apply to a defendant adjudged guilty of an offense under:

(1)  Section 15.03, Penal Code, if the offense is punishable as a felony of the first degree;

(2)  Section 19.02, Penal Code (Murder);

(3)  Section 19.03, Penal Code (Capital Murder);

(4)  Section 20.04, Penal Code (Aggravated Kidnapping);

(5)  Section 20A.02, Penal Code (Trafficking of Persons);

(6)  Section 20A.03, Penal Code (Continuous Trafficking of Persons);

(7)  Section 21.11, Penal Code (Indecency with a Child);

(8)  Section 22.011, Penal Code (Sexual Assault);

(9)  Section 22.021, Penal Code (Aggravated Sexual Assault);

(10)  Section 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual), if:

(A)  the offense is punishable as a felony of the first degree; and

(B)  the victim of the offense is a child;

(11)  Section 29.03, Penal Code (Aggravated Robbery);

(12)  Section 30.02, Penal Code (Burglary), if:

(A)  the offense is punishable under Subsection (d) of that section; and

(B)  the actor committed the offense with the intent to commit a felony under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(13)  Section 33.021, Penal Code (Online Solicitation Relating to a Minor);

(14)  Section 43.04, Penal Code (Aggravated Promotion of Prostitution);

(15) [~~(14)~~]  Section 43.05, Penal Code (Compelling Prostitution);

(16) [~~(15)~~]  Section 43.25, Penal Code (Sexual Performance by a Child); or

(17) [~~(16)~~]  Chapter 481, Health and Safety Code, for which punishment is increased under:

(A)  Section 481.140 of that code (Use of Child in Commission of Offense); or

(B)  Section 481.134(c), (d), (e), or (f) of that code (Drug-free Zones) if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections.

SECTION 1.02.  Article 42A.056, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.056.  LIMITATION ON JURY-RECOMMENDED COMMUNITY SUPERVISION. A defendant is not eligible for community supervision under Article 42A.055 if the defendant:

(1)  is sentenced to a term of imprisonment that exceeds 10 years;

(2)  is convicted of a state jail felony for which suspension of the imposition of the sentence occurs automatically under Article 42A.551;

(3)  is adjudged guilty of an offense under Section 19.02, Penal Code;

(4)  is convicted of an offense under Section 21.11, 22.011, or 22.021, Penal Code, if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(5)  is convicted of an offense under Section 20.04, Penal Code, if:

(A)  the victim of the offense was younger than 14 years of age at the time the offense was committed; and

(B)  the actor committed the offense with the intent to violate or abuse the victim sexually;

(6)  is convicted of an offense under Section 20A.02, 20A.03, 33.021, 43.04, 43.05, or 43.25, Penal Code; or

(7)  is convicted of an offense for which punishment is increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections.

SECTION 1.03.  The heading to Section 33.021, Penal Code, is amended to read as follows:

Sec. 33.021.  ONLINE SOLICITATION RELATING TO [~~OF~~] A MINOR.

SECTION 1.04.  Section 33.021, Penal Code, is amended by adding Subsections (c-1) and (f-1) and amending Subsections (d), (e), and (f) to read as follows:

(c-1)  A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a person with the intent that the solicitation will cause a minor to meet another person, including the actor, to engage in sexual contact, sexual intercourse, or deviate sexual intercourse.

(d)  It is not a defense to prosecution under Subsection (c) or (c-1) that the meeting did not occur.

(e)  It is a defense to prosecution under this section that at the time conduct described by Subsection (c) or (c-1) was committed:

(1)  the actor was married to the minor; or

(2)  the actor was not more than three years older than the minor and the minor consented to the conduct.

(f)  An offense under Subsection (b) is a felony of the third degree, except that the offense is a felony of the second degree if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense.

(f-1)  An offense under Subsection (c) or (c-1) is a felony of the second degree.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01.  Section 2(a), Article 38.37, Code of Criminal Procedure, is amended to read as follows:

(a)  Subsection (b) applies only to the trial of a defendant for:

(1)  an offense under any of the following provisions of the Penal Code:

(A)  Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Sex Trafficking of a Child);

(B)  Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(C)  Section 21.11 (Indecency With a Child);

(D)  Section 22.011(a)(2) (Sexual Assault of a Child);

(E)  Sections 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child);

(F)  Section 33.021 (Online Solicitation Relating to [~~of~~] a Minor);

(G)  Section 43.25 (Sexual Performance by a Child); or

(H)  Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or

(2)  an attempt or conspiracy to commit an offense described by Subdivision (1).

SECTION 2.02.  Article 62.001(5), Code of Criminal Procedure, is amended to read as follows:

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

(A)  a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.09 (Bestiality), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B)  a violation of Section 43.04 (Aggravated promotion of prostitution), 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(B-1)  a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c-1)(2) of that section;

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

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

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

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

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

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

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

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

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

(J)  a violation of Section 33.021 (Online solicitation relating to [~~of~~] a minor), Penal Code;

(K)  a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code; or

(L)  a violation of Section 20A.03 (Continuous trafficking of persons), Penal Code, if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code.

SECTION 2.03.  Section 250.006(a), Health and Safety Code, is amended to read as follows:

(a)  A person for whom the facility or the individual employer is entitled to obtain criminal history record information may not be employed in a facility or by an individual employer if the person has been convicted of an offense listed in this subsection:

(1)  an offense under Chapter 19, Penal Code (criminal homicide);

(2)  an offense under Chapter 20, Penal Code (kidnapping, unlawful restraint, and smuggling of persons);

(3)  an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecency with a child);

(4)  an offense under Section 22.011, Penal Code (sexual assault);

(5)  an offense under Section 22.02, Penal Code (aggravated assault);

(6)  an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);

(7)  an offense under Section 22.041, Penal Code (abandoning or endangering child);

(8)  an offense under Section 22.08, Penal Code (aiding suicide);

(9)  an offense under Section 25.031, Penal Code (agreement to abduct from custody);

(10)  an offense under Section 25.08, Penal Code (sale or purchase of child);

(11)  an offense under Section 28.02, Penal Code (arson);

(12)  an offense under Section 29.02, Penal Code (robbery);

(13)  an offense under Section 29.03, Penal Code (aggravated robbery);

(14)  an offense under Section 21.08, Penal Code (indecent exposure);

(15)  an offense under Section 21.12, Penal Code (improper relationship between educator and student);

(16)  an offense under Section 21.15, Penal Code (invasive visual recording);

(17)  an offense under Section 22.05, Penal Code (deadly conduct);

(18)  an offense under Section 22.021, Penal Code (aggravated sexual assault);

(19)  an offense under Section 22.07, Penal Code (terroristic threat);

(20)  an offense under Section 32.53, Penal Code (exploitation of child, elderly individual, or disabled individual);

(21)  an offense under Section 33.021, Penal Code (online solicitation relating to [~~of~~] a minor);

(22)  an offense under Section 34.02, Penal Code (money laundering);

(23)  an offense under Section 35A.02, Penal Code (health care fraud);

(24)  an offense under Section 36.06, Penal Code (obstruction or retaliation);

(25)  an offense under Section 42.09, Penal Code (cruelty to livestock animals), or under Section 42.092, Penal Code (cruelty to nonlivestock animals); or

(26)  a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

SECTION 2.04.  Section 773.0614(c), Health and Safety Code, is amended to read as follows:

(c)  A certificate holder's certificate shall be revoked if the certificate holder has been convicted of or placed on deferred adjudication community supervision or deferred disposition for:

(1)  an offense listed in Article 42A.054(a)(2), (3), (4), (7), (8), (9), (11), or (17) [~~(16)~~], Code of Criminal Procedure; or

(2)  an offense, other than an offense described by Subdivision (1), committed on or after September 1, 2009, for which the person is subject to registration under Chapter 62, Code of Criminal Procedure.

SECTION 2.05.  Section 773.06141(a), Health and Safety Code, is amended to read as follows:

(a)  The department may suspend, revoke, or deny an emergency medical services provider license on the grounds that the provider's administrator of record, employee, or other representative:

(1)  has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of the administrator, employee, or representative, other than an offense described by Section 542.304, Transportation Code;

(2)  has been convicted of or placed on deferred adjudication community supervision or deferred disposition for an offense, including:

(A)  an offense listed in Article 42A.054(a)(2), (3), (4), (7), (8), (9), (11), or (17) [~~(16)~~], Code of Criminal Procedure; or

(B)  an offense, other than an offense described by Subdivision (1), for which the person is subject to registration under Chapter 62, Code of Criminal Procedure; or

(3)  has been convicted of Medicare or Medicaid fraud, has been excluded from participation in the state Medicaid program, or has a hold on payment for reimbursement under the state Medicaid program under Subchapter C, Chapter 531, Government Code.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01.  This Act takes effect September 1, 2021.