

By: Meyer, Hunter, A. Johnson of Harris

H.B. No. 3111

A BILL TO BE ENTITLED

1 AN ACT

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

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

6 ARTICLE 1. ONLINE SOLICITATION RELATING TO A MINOR

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

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

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

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

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

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

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

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

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

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

24 (9) Section 22.021, Penal Code (Aggravated Sexual

1 Assault);

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

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

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

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

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

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

11 (B) the actor committed the offense with the
12 intent to commit a felony under Section 21.02, 21.11, 22.011,
13 22.021, or 25.02, Penal Code;

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

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

18 (15) [~~14~~] Section 43.05, Penal Code (Compelling
19 Prostitution);

20 (16) [~~15~~] Section 43.25, Penal Code (Sexual
21 Performance by a Child); or

22 (17) [~~16~~] Chapter 481, Health and Safety Code, for
23 which punishment is increased under:

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

26 (B) Section 481.134(c), (d), (e), or (f) of that
27 code (Drug-free Zones) if it is shown that the defendant has been

1 previously convicted of an offense for which punishment was
2 increased under any of those subsections.

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

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

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

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

13 (3) is adjudged guilty of an offense under Section
14 19.02, Penal Code;

15 (4) is convicted of an offense under Section 21.11,
16 22.011, or 22.021, Penal Code, if the victim of the offense was
17 younger than 14 years of age at the time the offense was committed;

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

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

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

24 (6) is convicted of an offense under Section 20A.02,
25 20A.03, 33.021, 43.04, 43.05, or 43.25, Penal Code; or

26 (7) is convicted of an offense for which punishment is
27 increased under Section 481.134(c), (d), (e), or (f), Health and

1 Safety Code, if it is shown that the defendant has been previously
2 convicted of an offense for which punishment was increased under
3 any of those subsections.

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

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

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

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

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

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

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

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

25 (f) An offense under Subsection (b) is a felony of the third
26 degree, except that the offense is a felony of the second degree if
27 the minor is younger than 14 years of age or is an individual whom

1 the actor believes to be younger than 14 years of age at the time of
2 the commission of the offense.

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

5 ARTICLE 2. CONFORMING AMENDMENTS

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

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

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

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

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

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

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

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

22 (F) Section 33.021 (Online Solicitation Relating
23 to ~~of~~ a Minor);

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

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

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

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

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

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

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

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

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

26 (D) a violation of Section 30.02 (Burglary),
27 Penal Code, if the offense or conduct is punishable under

1 Subsection (d) of that section and the actor committed the offense
2 or engaged in the conduct with intent to commit a felony listed in
3 Paragraph (A) or (C);

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

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

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

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

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

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

25 (I) the second violation of the laws of another
26 state, federal law, the laws of a foreign country, or the Uniform
27 Code of Military Justice for or based on the violation of an offense

1 containing elements that are substantially similar to the elements
2 of the offense of indecent exposure, but not if the second violation
3 results in a deferred adjudication;

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

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

8 (L) a violation of Section 20A.03 (Continuous
9 trafficking of persons), Penal Code, if the offense is based partly
10 or wholly on conduct that constitutes an offense under Section
11 20A.02(a)(3), (4), (7), or (8) of that code.

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

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

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

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

23 (3) an offense under Section 21.02, Penal Code
24 (continuous sexual abuse of young child or children), or Section
25 21.11, Penal Code (indecent with a child);

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

- 1 (5) an offense under Section 22.02, Penal Code
2 (aggravated assault);
- 3 (6) an offense under Section 22.04, Penal Code (injury
4 to a child, elderly individual, or disabled individual);
- 5 (7) an offense under Section 22.041, Penal Code
6 (abandoning or endangering child);
- 7 (8) an offense under Section 22.08, Penal Code (aiding
8 suicide);
- 9 (9) an offense under Section 25.031, Penal Code
10 (agreement to abduct from custody);
- 11 (10) an offense under Section 25.08, Penal Code (sale
12 or purchase of child);
- 13 (11) an offense under Section 28.02, Penal Code
14 (arson);
- 15 (12) an offense under Section 29.02, Penal Code
16 (robbery);
- 17 (13) an offense under Section 29.03, Penal Code
18 (aggravated robbery);
- 19 (14) an offense under Section 21.08, Penal Code
20 (indecent exposure);
- 21 (15) an offense under Section 21.12, Penal Code
22 (improper relationship between educator and student);
- 23 (16) an offense under Section 21.15, Penal Code
24 (invasive visual recording);
- 25 (17) an offense under Section 22.05, Penal Code
26 (deadly conduct);
- 27 (18) an offense under Section 22.021, Penal Code

1 (aggravated sexual assault);

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

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

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

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

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

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

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

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

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

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

27 (1) an offense listed in Article 42A.054(a)(2), (3),

1 (4), (7), (8), (9), (11), or (17) [~~(16)~~], Code of Criminal
2 Procedure; or

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

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

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

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

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

21 (A) an offense listed in Article 42A.054(a)(2),
22 (3), (4), (7), (8), (9), (11), or (17) [~~(16)~~], Code of Criminal
23 Procedure; or

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

27 (3) has been convicted of Medicare or Medicaid fraud,

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1 has been excluded from participation in the state Medicaid program,
2 or has a hold on payment for reimbursement under the state Medicaid
3 program under Subchapter C, Chapter 531, Government Code.

4 ARTICLE 3. EFFECTIVE DATE

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