

By: Huffman

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 Subsection (c-1) to read as follows:

(a) A person commits an offense if, in return for receipt of a fee by the actor or another, 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, 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 ~~[An offense is established under Subsection (a)(1) whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) whether the actor solicits a person to hire the actor or offers to hire the person solicited].~~

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

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

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

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

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

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

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

18           (d) It is a defense to prosecution for an offense under  
19 Subsection (a) ~~[under this section]~~ that the actor engaged in the  
20 conduct that constitutes the offense because the actor was the  
21 victim of conduct that constitutes an offense under Section 20A.02.

22           SECTION 2. Section 51.03(b), Family Code, is amended to  
23 read as follows:

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

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

27           (A) the penal laws of this state of the grade of

1 misdemeanor that are punishable by fine only; or

2 (B) the penal ordinances of any political  
3 subdivision of this state;

4 (2) the absence of a child on 10 or more days or parts  
5 of days within a six-month period in the same school year or on  
6 three or more days or parts of days within a four-week period from  
7 school;

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

11 (4) conduct prohibited by city ordinance or by state  
12 law involving the inhalation of the fumes or vapors of paint and  
13 other protective coatings or glue and other adhesives and the  
14 volatile chemicals itemized in Section 485.001, Health and Safety  
15 Code;

16 (5) an act that violates a school district's  
17 previously communicated written standards of student conduct for  
18 which the child has been expelled under Section 37.007(c),  
19 Education Code;

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

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

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

27 SECTION 3. Section 261.001(1), Family Code, is amended to

1 read as follows:

2 (1) "Abuse" includes the following acts or omissions  
3 by a person:

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

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

11 (C) physical injury that results in substantial  
12 harm to the child, or the genuine threat of substantial harm from  
13 physical injury to the child, including an injury that is at  
14 variance with the history or explanation given and excluding an  
15 accident or reasonable discipline by a parent, guardian, or  
16 managing or possessory conservator that does not expose the child  
17 to a substantial risk of harm;

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

21 (E) sexual conduct harmful to a child's mental,  
22 emotional, or physical welfare, including conduct that constitutes  
23 the offense of continuous sexual abuse of young child or children  
24 under Section 21.02, Penal Code, indecency with a child under  
25 Section 21.11, Penal Code, sexual assault under Section 22.011,  
26 Penal Code, or aggravated sexual assault under Section 22.021,  
27 Penal Code;

1 (F) failure to make a reasonable effort to  
2 prevent sexual conduct harmful to a child;

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

9 (H) causing, permitting, encouraging, engaging  
10 in, or allowing the photographing, filming, or depicting of the  
11 child if the person knew or should have known that the resulting  
12 photograph, film, or depiction of the child is obscene as defined by  
13 Section 43.21, Penal Code, or pornographic;

14 (I) the current use by a person of a controlled  
15 substance as defined by Chapter 481, Health and Safety Code, in a  
16 manner or to the extent that the use results in physical, mental, or  
17 emotional injury to a child;

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

21 (K) causing, permitting, encouraging, engaging  
22 in, or allowing a sexual performance by a child as defined by  
23 Section 43.25, Penal Code; or

24 (L) knowingly causing, permitting, encouraging,  
25 engaging in, or allowing a child to be trafficked in a manner  
26 punishable as an offense under Section 20A.02(a)(5), (6), (7), or  
27 (8), Penal Code, or the failure to make a reasonable effort to

1 prevent a child from being trafficked in a manner punishable as an  
2 offense under any of those sections.

3 SECTION 4. Section 169.002(a), Health and Safety Code, is  
4 amended to read as follows:

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

10 SECTION 5. Section 169A.002(a), Health and Safety Code, is  
11 amended to read as follows:

12 (a) The commissioners court of a county or governing body of  
13 a municipality may establish a prostitution prevention program for  
14 defendants charged with an offense under Section 43.02(a)  
15 [~~43.02(a)(1)~~], Penal Code[~~, in which the defendant offered or~~  
16 ~~agreed to engage in or engaged in sexual conduct for a fee~~].

17 SECTION 6. The changes in law made by this Act to Section  
18 43.02, Penal Code, apply only to an offense committed on or after  
19 the effective date of this Act. An offense committed before the  
20 effective date of this Act is governed by the law in effect when the  
21 offense was committed, and the former law is continued in effect for  
22 that purpose. For purposes of this section, an offense was  
23 committed before the effective date of this Act if any element of  
24 the offense occurred before that date.

25 SECTION 7. This Act takes effect September 1, 2015.